

TRIALS  
FOR  
**High-Treason,**  
AND  
OTHER CRIMES.  
WITH  
PROCEEDINGS  
ON  
*Bills of Attainder,*  
AND  
IMPEACHMENTS.  
*For Three Hundred Years Past.*

To which are prefix'd,  
A PREFACE, giving an Account  
of the Nature and Usefulness of the WORK.

AND  
An ALPHABETICAL TABLE of  
the respective PERSONS Try'd, and the  
Points of Law Debated and Adjudg'd.

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*By the SAME HAND that prepared the Folio  
Edition for the PRESS.*

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PART IV.

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L O N D O N :

Printed for D. Browne, G. Strahan, W. Mears, R. Gosling,  
and F. Clay. M D C C X X.



T R Y A L S



OTHER CRIMES  
WITH  
PROCEEDINGS

Bills of Attainder

AND  
IMPEACHMENTS



A PREFACE, giving an Account  
of the Manner and Usefulness of the Work.  
AN ALPHABETICAL TABLE of  
the respective Persons Try'd, and the  
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By the SAME HANDS, and printed by the Same  
Printer for the Press.

PART IV.

L O N D O N

Printed by D. Broom, at the Sign of the Crown, in St. Dunstons Church-yard.



THE  
TRIALS

Contain'd in

VOL. III. PART I.



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alias Boratzi, Christopher Uratz,  
John Stern, and Charles John Count  
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## ERRATA.

**P**AGE 13, last Line, read *and I went*. p. 23. l. 35 & 36, r. *Precedent*.  
p. 26, l. 19, for *Taylor*, r. *Tutor*. p. 60. l. 14, for *did*, r. *was*.  
p. 72. l. 29. r. *Precedent*. p. 112. l. 33, r. *was committed twice*.  
p. 128. l. 1. r. *or demur*. p. 133. l. 29. r. *no more*. p. 249, l. 1, r. *posi-*  
*tive*. p. 258, l. 2. from bott. for *Ex. & quindena pas.* p. 280. l. 4,  
dele l. p. 299, l. 13, r. *beg.* p. 327. l. 22, dele *not*. p. 433, l. 5.  
r. *The Court did not*. p. 453, l. 2. from bott. for *sociatim*, r. *seriatim*.  
p. 456, l. 10, r. *Credibility*. p. 459. l. 10, after *Coronation* add, *And*  
*the Sitting of the Parliament*.





# STATE TRYALS.

*The Tryal of* CHARLES Vol. III.  
GEORGE BOROSKY, *alias* Pag. 1,  
BORATZI, CHRISTOPHER  
URATZ, JOHN STERN, *and*  
CHARLES JOHN Count Co-  
ningfmark, 28 Feb. 34  
Car. II. 1681.

*Clerk of the Crown.*



Charles George Borosky hold up  
thy Hand, which he and the  
rest respectively did as they  
were call'd.

*Clerk of the Crown.* You  
stand Indicted, &c.

The Indictment was laid in the Parish of St. Martins in the Fields, in Com. Midd. and was to the effect following. That the said Borosky, Uraz and Stern, the 12th of Feb. in the 34th Year of the King, Charles II. with Force and Arms in the Parish and County  
Vol. III. B afore-

The Prisoners  
Arraigned.

The Substance  
of the Indict-  
ment.

# The T R I A L of

Page 2.

aforesaid, in and upon *Thomas Thynn Esq.* did make an Assault. And the said *Borosky*, a certain Blunderbuss being Charg'd with Four Leaden Bullets, which he held in both hands against the said *Thomas Thynn*, did discharge, and with the said Leaden Bullets, in and upon the right side of the Body of the said *Thomas Thynn*, did give four Mortal Wounds, of which he languish'd until the 13th Day of the said Month of *February*, and then died. And that the said *Christopher Urtz*, and *John Stern* were present, aiding and assisting the said *Borosky* to commit the said Murder. And that the said *Charles John Coningsmark*, before the said Murder, viz. the 12th of *February*, did Counsel, Perswade, and Procure the Persons aforesaid to commit the same.

Sir Fran. Pemberton.

The Indictment repeated in their own Language.

They pleaded not Guilty.

Demand a Jury of half Foreigners.

Page 3.

A Substantial Jury.

They are try'd all together, Principals and Accessary.

*L. C. J.* Read to them in their own Language the substance of it, which was done.

The Court demanded by their Interpreter if they were Guilty. The Prisoners respectively pleaded not Guilty, and desired to be try'd by a Jury of half *English* and half Foreigners, which is granted; and that no Friend or Relation of the Deceased be on the Jury. Granted.

*Count.* I desire a Jury of Quality.

*L. C. J.* Let them be substantial Merchants.

*Count.* I desire to be try'd by my self.

*L. C. J.* That cannot be.

*Count.* I desire the Tryal may be put off two or three Days.

*Mr. Thynn.* My Lord, our Witnesses are all ready, and the Counsel instructed, and wait to go on.

*L. C. J.* He has had time enough to prepare himself.

*Count.* The Jury are not yet Charg'd with me, I desire some time.

*L. C. J.* Here is but one Indictment against the Principals and your self, and we cannot try the Principals now, and you another time. If you dislike any of the Jury, you may except against them as they come to be Sworn.

*Count.*



Count. I desire a Copy of the Names of those return'd on the Jury. Page 4.

L. C. J. We cannot do it, but you may Challenge peremptorily.

Count. I desire the Jury may be *High Dutch*, some of them at least.

L. C. J. See there be no Roman Catholicks amongst them. The Count has leave to see the Pannel.

Count. I desire to look upon the Pannel. Granted.

L. C. Baron. Call first an *Englishman* and then a *Foreigner*. William Montague, Esq;

The Jury are call'd, and the Foreman sworn. One of the Jury is Challeng'd for the King.

L. C. J. For what Cause?

Sir Fr. Winnington. We need not shew Cause unless there want a number.

L. C. J. Let the Prisoners know, if the King shew any good Cause for it, he must not be sworn, else he must. And the way to cause the King's Counsel to shew their Cause is to Challenge all the rest. How to make the King's Counsel shew their Cause of Challenge.

Mr. Williams. We waive our Challenge; we Challeng'd him because he did not understand *English*, which is no reason at all.

L. C. J. To the Prisoners. You can Challenge but Twenty. Page 5.

Count. I desire those I Challenge may not come to them that are sworn.

L. C. J. It shall be so. The Jury are sworn.

Clerk of the Crown. Look upon the Prisoners. They stand Indicted, &c. If you acquit any one of the Principals. Accessary shall not be discharged, unless all the Principals be acquitted.

L. C. J. That is a mistake, it must be all the Principals.

Cl. of the Cr. If you acquit the Principals, you are not to inquire of *Charles John Coningsmark* as Accessary before.

L. C. J. Swear some Persons to Interpret the Evidence that shall be given: I do it for the sake of the Aliens who are of the Jury that do not  
Page 7.  
Persons sworn to Interpret the Evidence to the Jury.



# The T R Y A L of

not understand *English*. *Vandore* and *Wright* were sworn for the King, and *Mr. Craven*.

*Count*. I desire I may have Pen and Ink. Granted.

*Mr. Williams*. Call *William Cole*, and *William Ellers*, who were sworn; acquaint my Lord and the Jury how *Mr. Thynn* was assaulted.

sole the Foot-  
man's Evi-  
dence.

*Will. Cole*. My Master, *Mr. Thynn*, was coming up *St. James's-street* from the Countess of *Northumberland's*, and I had a Flambeau in my Hand, and was going before the Coach: At the lower end of *St. Alban's-street* I heard the Blunderbuss go off, and turning my Face, saw a great Smoak, and heard my Master cry out he was Murder'd, and I saw three Horsemen riding away on the right side of the Coach; I persud'd them and cry'd out Murder, I ran to the upper end of the *Hay-market*, and turning back again, my Master was got into the House, and I understood he was Wounded, which is all I know.

*Mr. Williams*. Can you say the Prisoners at the Bar, or any of them, were the Men.

Page 8.

*Will. Cole*. No, but I saw the Horse of one of them was a little Bay-horse.

*Sir Fr. Win*. What time of Night was it?

*Cole*. A quarter after Eight.

*Sir Fr. Win*. What Day?

*Cole*. On a Sunday, the 11th or 12th of February.

*Sir Fr. Win*. *Will. Ellers*, do you tell the Court and the Jury how *Mr. Thynn* was Wounded.

Ellers the  
Coachman's  
Evidence.

*Will. Ellers*. I came with my Master from *St. James's-street*, from my Lady *Northumberland's*, and as I came at *St. Alban's-street*, there came three Men riding by the right side of the Coach, and one of them turn'd about and said, stop you Dog; and just as I look'd about, the Fire was let into the Coach upon my Master, and the Men ran away as fast as they could.

*Sir Fr. Win*. Were those Men at the Bar any of the Persons?

*Ellers*.

*Ellers.* I cannot tell.

*L. C. J.* Interpreter, Repeat the Evidence to the Jury who are Foreigners. The Evidence is Interpreted to the Jury.

Then Mr. *Craven* Interpreted it to the Jury. Afterwards Mr. *Hobbs* was sworn:

*Mr. Williams.* Had you the searching of Mr. *Thynn's* Body after it was Hurt. *Hobbs* the Surgeons Evidence.

*Hobbs.* Yes, I was with him that Night he was Wounded, and found him Shot with Four Bullets which enter'd his Body, and tore his Guts, and wounded his Liver, his Stomach, and his Gall; Wounded his great Guts and his small Guts, and broke one of his Ribs, and wounded the great Bone below: I came to him about Nine or Ten a Clock.

*Sir Fr. Win.* Did he Die of those Wounds.

*Hobbs.* Yes, And I believe there was never a Wound but might prove Mortal.

*Sir Fr. Win.* When was this?

*Hobbs.* Sunday Night, the 12th of February.

*L. C. J.* Was there any thing done to the Bullets more than ordinary.

*Hobbs.* I cou'd not see any thing: The two little ones may be Iron, for one of them went through a thick Bone, and there is no Impression on it. (*Mr. Hobbs delivered them into Court.*)

*L. C. J.* This that has the Impression you think might be done against the Bones, and not left Ragged on purpose to do the more Mischief.

*Hobbs.* This wou'd not be more Mortal, or the Wound harder to heal, than a Wound given by another Bullet, only as it takes up a greater space in flying.

*L. C. J.* Wou'd not the raggedness hinder the healing.

*Hobbs.* No, only bruise the Flesh, which bruised Flesh must come away before it can be healed; all Bullets wound by bruising of the Flesh.

*L. C. J.* Were these the Four Bullets found in Mr. *Thynn's* Body.

*Hobbs.* I verily believe they are, *Dr. Lowre* had them out of my Hands for a Day or two, but I believe them to be the same.

*L. C. J.* Was any of them gone through the Body?

*Hobbs.* One of them lay between the Ribs and the Skin, but none quite through.

*L. C. J.* *Mr. Craven*, tell the Jury what this Witness has said. Which was done.

Then *Mr. White* the Coroner was sworn.

*Sir Fr. Win.* Pray will you acquaint my Lord what you know of this Murder.

*White.* On the 13th of *February* in the Afternoon, I sat upon the Body of *Thomas Thynn*, Esq; and I found he had four Holes on his Right-side, behind his short Ribs, and they seem'd to be Holes made with Bullets, and I gave order to open the Body, and there the Surgeon found the Bullets: I was by when he took them out.

This Evidence was Interpreted to *Borosky* and the other Prisoners.

*Borosky* I cannot tell how many Bullets were in the Blunderbuss, I did not Charge it, tho' I Fir'd it.

*Jury.* Can he tell who did Charge it.

*Interpreter.* He can tell, he says.

*L. C. J.* It will not be very material that; for his Evidence can Charge no body but himself.

*Mr. Bridgman*, and *Sir John Reresby*, the Justices who took the Prisoners Examination were sworn.

*Interpreter.* My Lord, *Borosky* says the Blunderbuss was given him by Captain *Uratz*.

*Sir Fr. Win.* Were you by at the taking the Examination of these Persons.

*Bridgman.* *Sir John Reresby* and I took these Examinations: I will Read them if you please.

*L. C. J.* Let that alone, *Mr. Bridgman*: When *Borosky* was Examind, what did he say?

*Bridgman.* He own'd it to the best of my remembrance, but I refer to the Examination.

*L. C. J.* Look upon it to refresh your Memory, and then tell us.

*Bridg-*

Page 9.  
*White* the Co-  
roner's Evi-  
dence.

Prisoners Evi-  
dence can  
Charge none  
but himself.  
The Justices  
Evidence who  
took the Pri-  
soners Exami-  
nation.

The Exami-  
nation not suf-  
fered to be  
Read.

*Bridgman.* *Borosky* did own he came into England at the desire of Count *Coningsmark*.

*L. C. J.* Speak only as to himself, for it is Evidence only against himself.

*Sir Fr. Win.* My Lord, his Confession is entire, We cannot separate it.

*L. C. J.* His Evidence can Charge no body but himself; and that is the reason I wou'd not have his Examination read, for it cannot be read but against himself.

*Bridgman.* He Confess'd that he was present, when Captain *Uratz* stopp'd the Coach; that he fir'd the Musquetoon by the Captains order, and that before he did it, the Captain bid him as soon as ever he stop'd the Coach to Fire.

*Interpreter.* He Confesses he fir'd it.

*Bridgman.* Captain *Uratz* confess'd he had a design to Fight with Mr. *Thynn*, and Mr. *Thynn* having several times refus'd to Fight, he resolv'd to oblige him to Fight by force; therefore he took the others along with him; that if he shou'd fail in his Revenge, or after the Thing done he shou'd be persued, he might make his Escape; He confess'd he was there, and stop'd the Coach, but *Borosky* fir'd by mistake, for he bid him not fire unless he shou'd be hindred from Fighting or making his Escape.

The Evidence is Interpreted to *Uratz*, and he acknowledg'd the Substance of it in Court.

Page 10.

*Sir Fr. Win.* Ask him what Affront Mr. *Thynn* gave him.

*Interpreter.* He says at *Richmond*, he heard he spoke and gave out very ill Language of Count *Coningsmark*, who was his Friend, and a Man he had many Obligations to; and so of himself too, and he wou'd never acquaint the Count with it, but wou'd have Satisfaction, and take the Quarrel upon himself being a Gentleman: He says, he heard that he call'd him *Hector*, and gave such ill Language as was never to be suffered,

*Uratz* ask'd what Affront Mr. *Thynn* gave him.



*L. C. J.* Ask him if ever he saw Mr. *Thynn*, and how many times?

*Craven.* He says he has seen him several times at the Play-house, and riding in his Coach.

*L. C. J.* Ask him if he ever spoke to him.

*Craven.* He says he had no Friend to speak to Mr. *Thynn*, and he cou'd not speak to Mr. *Thynn* himself, for Mr. *Thynn* might think he was not a Gentleman good enough to Fight with him: He says this Affront was given him eight Months ago, beford he went out of *England*: That he sent a Letter out of *Holland* to Mr. *Thynn* by the Post to Challenge him.

*Bridgman.* Stern on his Examination Confessed, that Captain *Uratz* told him he had a Quarrel with a Gentleman, and that if he would assist him in it he would make his Fortune, and that the Captain gave him Mony to buy the Blunderbus: He Confess'd also he was at the Fact, and he said when he came to *Chairing-Cross* he was about ten Yards before, and he heard the Captain say Stop to the Coach, upon which he turn'd about, and presently saw the Shot made, and he saw the other Persons ride away, and he made away after them: And farther, that the Captain told him he wou'd give Two, or Three, or Four Hundred Crowns to find a Man that wou'd Kill Mr. *Thynn*, and that before *Borosky* came over, the Captain desir'd him to get an *Italian* to Stab a Man.

Page 11.

*Interpreter.* He denies he spoke any thing of Four Hundred Crowns, or about an *Italian*. He says he did assist at loading the Musquetoon, That he and the Captain did it together.

*Sir John Reresby* sworn and deposed in substance the same as Mr. *Bridgman*.

*Mr. Williams.* Call *Fredrick Hanson*. Who was sworn.

*Hanson's Evidence, who was Tutor to the Young Count.*

*Hanson.* I have known Count *Coningsmark* Four Years: He came into *England* above a Month since, I saw him first at the Post-house, where he came privately: His first Lodging was at a corner House in the *Hay-Market*, where he



he lay about a Week, I believe he kept his Chamber all the Time.

Sir *Fr. Win.* At that Lodging did he wear his own Hair, or was he in a Disguise?

*Hanson.* That Sunday Night I saw him, he was in his Night-cap and Gown, ready to go to Bed. When he sent for me to the Post-House, it was by the Name of *Carlo Cuski*: He was not known to any of the Family where he Lodg'd, but was call'd, *The Stranger*.

Mr. *Williams.* Did he never tell you what his Business was.

*Hanson.* No, his second Lodging was at a corner House, about two Streets from the former, where he continued but a few Days because the Chimney Smoak'd: From thence he remov'd to *St. Martin's-Lane*, where I saw him the last time on a Sunday in the Evening, about two or three Hours after Mr. *Thynn* was Kill'd. He kept himself private there as in his other Lodgings.

Mr. *Williams.* What Company came to him?

*Hanson.* Dr. *Frederick*; and once I saw Captain *Uratz* at his Lodging, who I think came into England with him this last time, or rather a little before him; I saw him with him at the Post-House, and once at his first Lodging.

Mr. *Williams.* Did you carry any Message from the Count to the *Swedish* Envoy.

*Hanson.* No direct Message, but the Count having told me in familiar Discourse that he heard Esq; *Thynn* had spoken abusive Language of him, and he wou'd fain know what wou'd be the Consequence if he shou'd call him to an Account, and seem'd desirous to have the Opinion of the *Swedish* Envoy. I mention'd it to the *Swedish* Envoy, who said, if the Count meddled with Mr. *Thynn*, he would have but bad living in England, but what the Law was in this Case he cou'd not answer, but he wou'd enquire and give me an Account; but I never spoke with him after.

Sir. *Fr. Win.* Did you ever hear the Count speak of Fighting Mr. *Thynn*.

*Hanson.* He never said he was resolv'd to Fight him, or call him to an Account; but said, If he shou'd

shou'd call him to Account, what wou'd be the Consequence of it.

Page 13.

Sir *Fr. Win.* Call him to Account, about what?

*Hanson.* He said Esq; *Thynn* had reflected on his Person, and on his Horse.

*Mr. Williams.* Was there any Thing in that Message about Marrying my Lady *Ogle*.

*Hanson.* He enquir'd, in Case he shou'd meddle with Esq; *Thynn*, if the Laws of *England* wou'd be contrary to him in the Hopes or Pretensions he might have to my Lady *Ogle*: His Phraise was, if he shou'd have an Advantage of him when he shou'd call him to an Account.

Sir *Fr. Win.* Are you not Governour to the Young Count?

*Hanson.* The Countess has given me her younger Son, for me to be his Companion in his Travels.

Sir *Fr. Win.* Did not Count *Coningmark* desire you to carry the Message to the *Swedish* Envoy?

*Hanson.* That I might not mistake, I have put down the Discourse in Writing. He reads.

*L. C. J.* Read it to your self if you will, and tell us the Substance.

*Hanson.* The Count did not tell me that he desir'd me to go, nor did he give me any positive Charge to go to the *Swedish* Envoy, but by the Discourse I had with him, I did understand he was desirous to have his Advice: I did not go on purpose, but when I came to pay my Respect to the Envoy in a familiar Discourse; I did propose this, What might be the Consequence if the Count shou'd call Mr. *Thynn* to an Account? to which he answer'd as I have already told you.

Page 14.

*Mr. Williams.* When did you see *Borosky* first?

*Hanson.* He came to me on the *Friday*, to the *French* Academy, to enquire for Count *Coningmark*. He told me he was just come to *England*, and had a Letter for the Counts Secretary, and another for his Steward: I told him that he was expected, and bid him go and pay his Lodging, and come to me in the Morning early.

Sir *Fr. Win.* Pray who expected him?

*Hanson.*

*Hanson.* The Count; for he had spoken formerly twice of him, and in the great Storm, thought he had been lost; which was about twelve or thirteen Days before, he said he was an able Man, and understood Horses; that he had a Mind to buy *English* Horses, and designed he shou'd look after them, and dress them after the *German* way. I went once to the *Change* of my own accord, to enquire if the Ship was lost.

*Mr. Williams.* Did you see *Borosky* again the next Day?

*Hanson.* He came the next Day, and I went with him to the Count's Lodgings. The Count asked him where he had been? He answer'd, he had been at Sea, and toss'd up and down. I left him there with the Count.

*Sir Fr. Withins.* Pray what Directions had you about a Sword for this *Borosky*?

*Hanson.* The Count told me the Fellow was Naked, and he had no Man to send to buy him a Riding Coat: I undertook to do it, and brought the Riding Coat to the Count's Lodgings. He told me his Man had never a Sword, and he would bestow about Ten Shillings for one. I bespoke one for him at *Charing Cross*, of a Cutler that I knew: He sent the Sword to me to the Academy, and I afterwards sent it to the Count's Lodgings; I receiv'd Directions for buying of the Sword, on *Saturday* in the Afternoon.

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*Sir Fr. Win.* Had you any Discourse with the Count, about the Murder of *Mr. Thynn*?

*Hanson.* I went to the Count's Lodging that *Sunday* about Ten in the Evening, as I had done for three *Sundays* before, as I came from *White-Hall*. He was in his Night-Cap and his Gown, and ask'd me what News? I told him I could tell him great News, which was the killing of *Esq; Thynn*, who was shot in his Coach. He did not make me any Answer, by which I concluded the Count was not any way concern'd in the Business. I think he ask'd me what the People said about it, I told him the Court was heartily Angry at it, and that it was an *Italian* Trick not used in *England*. He diverted

ed the Discourse, by shewing me a Paper of Fortifications.

*L. C. J.* Now deliver what you have said in *French*, for the Benefit of the Jury.

*Mr. Williams.* We pray, my Lord, that our Interpreter may do it.

*L. C. J.* When a Man can speak both Languages, he is his own best Interpreter.

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*Sir Fr. Win.* What your Lordship says, can't be opposed regularly, but I appeal to your Lordship whether he answers like an ingenuous Man.

*Hanson repeats his Evidence to the Jury in French.*

*L. C. J. North.* If there be two ways, 'tis best to take that which will give Satisfaction to all Persons: Let him be asked by the Interpreter what Questions the Counsel would have answer'd, and then let him tell his Answer in *French*.

*L. C. J.* Let it be so.

*Interpreter.* The Count desires to know, if he may be permitted to make his Defence against these Witnesses?

*L. C. J.* No, he is not to make his Defence now, but he may ask the Witnesses what Questions he pleases.

*L. C. J. North.* Let the Question be put to the Interpreter, that we may know what the Question is, before the Witnesses gives an Answer.

*Craven.* He asks *Mr. Hanson* if he has not seen him oftner in his Lodging Undress'd than Dress'd? And whether he was not to take Physick from his Physician?

*Hanson.* I don't remember I saw him dress'd four times in his Coat; and as to his taking Physick, I saw *Dr. Frederick* often in his Lodgings, and when the Doctor came to see the young Count, who was sick of an Ague, I asked him what Distemper the Count had? He answer'd, he had not told any Body that the Count was Sick, or what he was Sick of, but he hoped in a short time he would be Recovered.

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*John Wright* was Sworn.

*Sir Fr. Winn.* Pray when came this *Polander, Borosky*, into England?

*Wright's Evidence.*

*Wright.* He came upon *Friday* the 10th of this Month: I first met him at the *Cross-Keys* in *Throgmorton*



*morton Street*, and I went with him to the young Count's Lodgings at the Academy. He delivered a Letter to Mr. *Hanson*, and staid there about half an Hour. Mr. *Hanson* bid me take the *Polander* back with me, and bring him to him to Morrow betimes, for he must dispatch him about his Business. I came to him the next Morning, and the *Polander* took his Sea Bed, a Gun with a Wheel Lock, and some other things he had with him. I brought him to a House within a Door or two of the Academy, where he laid down his Luggage, and went out, and return'd again with Mr. *Hanson*, who bid the *Pole* pay me for my trouble, and take up his Things and go along with him. He did so, and I never saw the *Pole* afterwards.

Dr. *Frederick Harder* was Sworn.

Mr. *Williams*. How long have you known the Count that stands at the Bar, and Captain *Uratz*?

Dr. *Harder*. I have known the Count four or five Years, and Captain *Uratz* about two.

Dr. *Harder's*  
Evidence.

Mr. *Williams*. Were they acquainted?

Dr. *Harder*. Capt. *Uratz* liv'd with the Count, and came over to *England* with him. About a Month ago, Captain *Uratz* came to me, and told me my Lord would speak with me; I went with him to my Lord, who was then in his first Lodging, at the Corner of the *Hay Market*.

Mr. *Williams*. Did you use to inquire for him by his own Name, and did you observe him to be in a Disguise?

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Dr. *Harder*. He desired to be private, because he was to take some Medicines, and he would not have it known, and he desir'd to be call'd by the Name of *Carlo Cuski*. As for a Disguise, he had a brown or black Wig, but his own Cloaths.

Mr. *Williams*. Was you with him the Sunday Morning Mr. *Thynn* was murder'd?

Dr. *Harder*. I cannot tell, but I was with him about Nine at Night.

Mr. *Williams*. Did you receive any Letter from Captain *Uratz*, and what was in it?

Dr. *Harder*. I did, and in it he told me the Count desir'd to speak with me. I went thither, and the Count saw the Letter, and afterwards went

went with the *Polander* to my Lodgings, and the Captain's Man came in, and, I said, here is a Man will direct you to Captain *Uratz's* Lodgings.

*Mr. Williams.* Was the *Polander* in the Count's Lodgings when you shew'd him the Letter?

*Dr. Harder.* Yes, and it was of a *Saturday*.

*Mr. Williams.* How came the *Polander* into your Company on *Saturday* Morning?

*Dr. Harder.* I had him from my Lords that Morning.

*Mr. Williams.* Then my Lord and the *Polander* were together.

*Dr. Harder.* No, the *Polander* was below Stairs. The Name of the Captains Man who took the *Polander* from my Lodgings, I believe was *Berg*.

*Sir Fr. Win.* When the *Polander* came with you from the Counts, did you observe he had any Thing about him?

*Dr. Harder.* He had a Portmantua, or some such Thing under his great Campaign Coat.

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*L. C. J.* You seem to intimate, as if my Lord lay private to take Physick for some Spots that came out upon his Breast: Did you give him Physick all this Time?

*Dr. Harder.* Not always purging Physick, but some sort of Physick every Day.

*Craven.* The Count asks him where he was when that unhappy Business was done?

*Dr. Harder.* I found him that Day Ill, lying upon the Bed: I ask'd him how his Physick had work'd, he told me he was afraid he had got some Cold; and I went home and fetch'd him Physick to take that Night: I never had any other Discourse with him, but about administering Physick.

*L. C. J.* Do you know why my Lord alter'd his Lodgings so often?

*Dr. Harder.* The First, in the *Hay-Market*, he removed from, because he thought it was too Publick: The next, in *Rupert-street*, the Chimney smok'd so, that he did not stay above three Days, from whence he remov'd to *St. Martins Lane*, where he staid till he went away.

*Mr. Williams*

Mr. Williams. Did the Physick you gave require the Count to keep within?

Dr. Harder. Yes it did.

Sir Fr. Wishins. Who was with the Count on Sunday Night?

Dr. Harder. Mr. Hanson, and the Captain came in, and went out again when I was there, about Nine a Clock.

Mr. Williams. You say the Polander came with you from the Count's Lodgings to your House, and you parted with him there.

Dr. Harder. Yes: Captain Uratz's Man took him away with him.

Mr. Williams. That was Berg was it not?

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Dr. Harder. Yes.

Thomas Howgood was Sworn.

Mr. Williams. Did you sell any Sword to the Count?

Howgood, the Sword Cutler's Evidence.

Howgood. I sold the Governor a broad Horsemans Sword, on Saturday was Fortnight: I sent it to the Governors Lodgings at the Academy.

Robert French was Sworn.

Sir Fr. Win. Pray tell my Lord what you know of the Count's concealing himself?

French, the Count's first Landlord, his Evidence.

French. I never saw him before I came into Court, but it seems he lodg'd in my House three or four Days, between three Weeks and a Month ago, just ten Days before the Murder. Captain Uratz lodg'd with him all the Time.

Mr. Williams. Did Dr. Harder use to come to him?

French. Yes, several times a Day.

Mr. Williams. What Name did he inquire for him by?

French. The Doctor took the Lodgings, and it was for a Stranger, I heard no Name.

Anne Prince was Sworn.

Sir. Fr. Win. Did you ever see Count Coningsmark at your Masters House in the Hay-Market?

The Maids Evidence.

Prince. Yes, he came there last Friday was a Month, and staid till Wednesday. He went by no Name while he was there.

Mr. Williams. Did the Captain come to him?

Prince.

Watts, the  
Count's Foot-  
boy's Evi-  
dence.

Prince. He used to lodge there.

*Francis Watts* was Sworn.

*L. C. J.* How old is the Child?

*L. C. Baron.* Ask him if he understands what an Oath is?

*Mr. Thynn.* He was Sworn before the King and Counsel.

*L. C. Bar.* Then sure he may give Evidence here.

*Sir Fr. Win.* Were you in the Counts Service?

*Watts.* Yes, I was with him Eleven Days: I came to him on a Friday, I think it was ten Days before the Death of *Mr. Thynn*. I lay at my Fathers a Nights, and the Count was to give me Six Pence a Day and my Diet.

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*Sir Fr. Win.* How many Lodgings had he while you were with him?

*Watts.* One in the Hay-Market, one in Rupert-Street, and the last at St. Martins-Lane.

*Mr. Williams.* Was you in your Masters Service when *Mr. Thynn* was kill'd?

*Watts.* Yes.

*Sir Fr. Win.* Did you observe any Body come to your Masters Lodgings that Evening, after *Mr. Thynn* was kill'd?

*Watts.* Yes, that Gentleman in a black Peruke came in, in a great Coat, and went strait up Stairs, I suppose to my Master's Lodgings, I was in the Shop. He did not come down again while I staid in the House, which was about three quarters of an Hour after he came in.

*Sir Fr. Withins.* Do you remember you had any Discourse with the Count about riding on Sundays?

*Watts.* He ask'd me about Eleven a Clock, that Sunday in the Forenoon, whether People were suffer'd to ride about the Streets on Horseback on Sundays?

*Sir Fr. Win.* Do you remember the Polander was with the Count your Master?

*Watts.* He came on the Saturday Morning.

*Sir Fr. Win.* Do you know of any Sword that was deliver'd him?

*Watts.* On Sunday Morning there was a Sword brought to my Masters Lodgings, and this Man, the Polander, afterwards had it below Stairs.

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Sir



Sir Fr. Win. Where did the *Polander* dine on *Saturday*?

*Watts.* He din'd with my Master's Man and me, and lay that Night in my Masters Man's Chamber, in the Garret. And he went away on *Sunday* Morning, with a pair of Boots under his Arm, and the Sword; and he had a new Coat, and Dr. *Harder* went away with him. *Watts, and Dr. Harder, Confronted.*

Sir Fr. Win. Dr. *Harder*, were you at the Count's on *Sunday*?

Dr. *Harder.* I never saw the *Polander* but once, I can't tell whether I fetch'd him away a *Saturday* or *Sunday* Morning.

Sir Fr. Win. Do you remember whether the *Polander* had a Sword or pair of Boots, and what Coat he had on?

Dr. *Harder.* He might have a Sword, as Travellers commonly have, and he had something under his Coat, but I can't say it was Boots.

L. C. Baron. Had he a Buff Coat under his Campaign?

*Watts.* Yes.

Mr. *Williams.* What time did you come to your Masters on *Monday* Morning?

*Watts.* It was after Seven, and he was up.

Mr. *Williams.* Was he packing up?

*Watts.* Not that I see.

Sir Fr. Win. What did he say to you about the Hubub in the Street?

*Watts.* He ask'd me what the Matter was, and I told him that some were taken that had kill'd Esq; *Thynn*. He ask'd me when Esq; *Thynn* was murder'd: I told him, the Night before; but I did not mind any Thing that was done; but as I went down, I met with a Stranger, and he went up Stairs, but I never saw my Master after, till he was taken.

Mr. *Williams.* Were any of your Master's Goods carried away then?

*Watts.* Yes, two Portmantles. My Father carried them away between Eight and Nine a Clock.

Sir Fr. Win. What did your Master take no Leave, nor say any Thing to you?

*Watts.* No.

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C

Sir

Sir Fr. Win. What Peruke had he when he went away?

Watts. He had a black Peruke, and a Light-colour'd Suit, with Gold Buttons.

Tho. Watts, the Boy's Father, Sworn.

Watts, the  
Boy's Father's  
Evidence.

Sir Fr. Win. Were you imploy'd to carry any Thing for the Count?

T. Watts. Two or three Times I was; the last time, was the Morrow after the Murder, between Eight and Nine in the Morning: I carried a Portmantle, and a Portmantle Trunk. His Man told me they were to go to *Windsor*, and bid me carry them to *Charing-Cross*, to be put into the Coach, and the Coach-man took them in.

Sir Fr. Win. What brought you acquainted with the Count?

T. Watts. I was Dr. *Fredericks* Porter.

Mr. Williams. Was it your Son that waited on him?

T. Watts. Yes, for when I brought the Things, they said they had forgot to give me a Sword I was to carry with the Things; I said I had a Boy I would send it by, I did so, and they took a liking to the Boy.

L. C. J. Did you see the Count the last Morning?

T. Watts. No.

Mr. Williams. Did no Body desire you to conceal your Boy, that he should not be at this Trial?

T. Watts. No, Sir.

*Derick Raynes* was Sworn.

Raynes, the  
Sword who  
harbour'd the  
Count, his  
Evidence.

Mr. Williams. When did you see the Count, the Prisoner at the Bar?

Raynes. He came to my House at *Rotherhith* on Monday in the Evening, I was not at home when he came. He had black Hair when I saw him.

Mr. Williams. How long did he continue at your House?

Raynes. From Monday till Thursday Morning, when a Waterman carried him to *Debtford*.

Mr. Williams. Was he private there?

Raynes. He walk'd about the House.

Sir

Sir Fr. Win. What Countryman are you?

Raynes. I am a Sweed.

Mr. Williams. What did the Count say to you, about coming to your House in a Disguise?

Raynes. When I demanded of him what he was, he told me he was Count Coningsmark, and that he was desirous to go to Gravesend.

Sir Fr. Win. Did you furnish him with any Cloths?

Raynes. I help'd him to a Coat, Stockings, and Shoes. He desir'd a Coat, and a pair of Stockings to keep his Legs warm; he said his own Cloaths were too cold to go upon the Water: And he said he was afraid of coming into Trouble too.

Richard Chappel Sworn.

Mr. Williams. When did you first see the Count?

Chappel. I saw him on Thursday-Morning about Ten a Clock, at Rotherbith: That Man brought him to me. I am a Skuller, and was to carry him to Gravesend.

Mr. Williams. Whither did you carry the Count?

Chappel. I carried him that Day to Debtford, the next to Greenwich, then to Green-Hith, and the next day to Gravesend. I was hir'd to wait upon him all that Time, and was to have Five Shillings every Twenty four Hours. He said he was a Merchant, and bought Jewels.

L. C. Baron. Was he alone?

Chappel. This Man went with him to Debtford.

Mr. Gibbons, and Mr. John Kid Sworn.

Mr. Kid. On Saturday in the Afternoon, a Gentleman came to me, and gave me Information where the Count was. We went to the Recorder, and had his Warrant, and then I came by Water to Rotherbith, and this same Raynes and his Wife, where he lay, were gone to Greenwich to carry his Cloths. So going down to Greenwich, we call'd every Boat upon the River on Board of us, so at last we got the Boat where they were. We ask'd what he had done with the Gentleman that lay at his House? He told us at last, if we mis'd him that Night, we should have him in the Hope on

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Chappel's Evidence, who carried the Count to Gravesend.

Gibbons, and Kid, who took him, there Evidence.

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*Monday Morning*, upon a Vessel that was to be clear'd on *Monday Morning*: But upon *Sunday Night*, about Eight or Nine a Clock coming to *Gravesend*, we happen'd to take him at his Landing there. As soon as he was laid hold on, he desir'd to know whether I knew him? I told him his Name was Count *Coningsmark*, which he acknowledg'd. We found no Arms about him. Coming up the River, he ask'd me if the Captain had confess'd any Thing; I told him he had confess'd some Particulars, and that the *Polander* had confess'd, and wept mightily. With that, my Lord seem'd very much concern'd, and took up his Cloaths and bit them, and sat a while up, but was very much Discomposed, and then desir'd to lie down.

Sir *Fr. Win.* Set up Mr. *Gibbons*.

Mr. *Gibbons*. When we came ashoar at *Gravesend*, I catch'd my Lord fast hold by the Arm, and he said, what do you come to rob me! I told him he was my Prisoner, I was the King's Messenger, and had waited there for him several Days. When I named his Name, he gave a little start, and his Peruke dropp'd off. We went up the Street to the Mayor, and the People crouding about us, were very Rude, and he desir'd he might be well us'd. I desir'd he might be search'd, but we found no Arms about him. We carried him from the Mayor to an Inn, where my Lord ask'd my Name, and being told it was *Gibbons*, and that I belong'd to the Duke of *Monmouth*. He said the Duke of *Monmouth* had no Command now, and how cou'd I take him by his Order. I said, my Lord, I do not apprehend you by his Order; you have kill'd a very good Friend of mine, and had like to have kill'd a more particular Friend, and a Master. My Lord seem'd to be sorry for that: But, says he, I don't think they would have done any Harm to the Duke of *Monmouth*. After that, he walk'd up and down a while, and then, said he, 'tis a Stain upon my Blood, but one good Action in the Wars, or lodging upon a Counterscarp, will wash away all that: The Mayor was in the Room, and several



several others. I told him the Captain had made a Confession: Says he, I don't believe the Captain would confess any Thing.

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*Interpreter.* In answer to the Evidence that has been given, my Lord *Coningsmark* says, he came into *England* with a Design to raise a Regiment here, and to serve the King of *England* against the *French*. He says he had a Distemper that broke out in his Arms and Breast, and therefore he lay privately till he was cur'd; for he was afraid, if he kept Company, and drank Wine, it might hinder his Cure. He says too, that his Equipage could not come over till after, and he would not willingly appear till he had his Equipage, and could appear as a Man of Quality ought to do. He says, he chang'd the first Lodging because it was too cold, and the next, because it smoak'd. He says, the *Pole* was taken into his Service, when he went to *Tangier*, when he went several Thousand Miles to do the King Service: And he had design'd at that time to bring him into *England*, to dress his Horses after the *German* way; that he sent over One Thousand Pistoles to buy Horses.

The Count's Defence.

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*Young Count.* My Lord, I had a Bill of Exchange for One Thousand Pistoles to buy Horses, and he has bought one, and was to buy more.

*Interpreter.* My Lord, he says, he fears the Jury that do not understand *English*, do not understand his Reasons for being in a Disguise.

*L. C. J.* Can't he give an Account of it himself?

*Mr. Williams.* No, my Lord, his Evidence must be interpreted to them by an Interpreter.

*Sir Nath. Johnson.* He desires to know whether he may not say the same Things over again to the Jury in *French*; there are a great many Persons of Quality that understand it, and will see whether he speak true.

*L. C. J.* Let him if he pleases.

*Sir Fr. Win.* But I hope your Lordship will tell the Jury, it goes for nothing without Proof.

Then the Count spoke to the Jury in *French*.

*Jury-man.* We understand not *French*.

Then the Count spoke it in *Dutch*.

The Prisoner not allow'd to interpret to the Jury what he said in his Defence.

*Interpreter.* He says he never had any Quarrel with Mr. *Thynn*, or to the best of his remembrance ever saw him.

*L. C. J.* Did you ever hear Mr. *Thynn* had Married my Lady *Ogle* before you last came into England?

*Interpreter.* He says he never heard of it till he was going to *Strasburgh*, which was about half a Year ago, and then the whole Town talk'd of it.

He says 'tis strange he should ask a Skulion Boy whether People might ride on *Sundays*, when he himself has often rid to *Hyde-Park* on *Sundays*, as many Persons of Quality do.

Then Major *Oglethorpe* and others testified his riding there on *Sundays*.

*Sir Nath. Johnson.* My Lord, he desires I may be Examined concerning the Boy.

*L. C. J.* Say what you can say.

Sir Nath. Johnson's Evidence.

*Sir Nath. Johnson.* My Lord, I went to wait upon the Count in *Newgate*, and Mr. *Richardson* told me there was a little Boy waited at the Count's Door for his Wages, I ask'd the Boy how long he had serv'd the Count? He said a little while, and then said I, if you liv'd with him, what do you know of this Business? And then, of himself, he began and told me, only this I know, that *Uratz* was in my Masters Chamber that Night, and the *Polander* went out that Night with a pair of Boots under his Arm, and more than this I do not know: He said also, that he had no Master at present, but that Sir *Tho. Thynn* had promis'd him a Place, and in the mean time, says he, I am to go to serve my Lord Privy Seal, so my Lord gave him twenty Shillings for his Wages.

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*Sir H. Win.* We observe what sort of an Interpreter *Sir Nath. Johnson* is: He mingles Interpreter, and Witness, and Advocate together, I don't know what to make of him.

*Sir Tho. Thynn.* I never spoke to the Boy in all my Life.

Contradicted by Sir Thomas Thynn.

Mr. *Thynn*. Nor I, but he gave the same Testimony he gives now before the King and Counsel.

*L. C. J.*

L. C. J. Upon what Account did Captain Uratz come to you that Night Mr. Thynn was Kill'd.

*Interpreter.* The Count says he took Physick, and he thought the Captain came to give him a Visit. He was lying upon the Bed.

The Count continues to answer the Evidence.

*Interpreter.* He says, as to the Coat and Sword, He provided the *Polander* with a Coat, because he was all Ragged, that for the broad Sword, it was no more than what Servants of his bulk and make use to wear; and for the buff Coat, he had it before.

Sir Nath. Johnson. All the Servants of Gentlemen in *Germany* wear such broad Swords.

L. C. J. You having brought over this *Polander* to choose Horses, and manage them as a Groom, How came you to part with him to Captain Uratz so soon.

*Interpr.* He says, being Sick himself, and there being no hopes of an Alliance between *England* and *Holland*, he had no such Occasion as when he wrote for him; and he says, 'tis a common thing in *Germany* to give Servants away when they have no Occasion for them.

Sir Nath. Johnson. These *Polanders* are like Slaves.

Mr. Williams. Pray, Sir Nathaniel, is a Ren-counter the Killing of a Man after this manner: The Captain said he intended to have made a Ren-counter of it.

Sir Nath. Johnson. Sir, you don't speak as if you were a Soldier.

Sir Nath. Johnson's Forwardness taken notice of.

Sir Fr. Win. My Lord, we desire to take Notice of Sir Nathaniel's Forwardness, for it may be a Preident in other Cases.

L. C. J. What do you talk of a Preident of a like Tryal of Strangers that cou'd speak not a Word of *English*; but you wou'd fain have the Court thought hard of, for doing Things that are Extraordinary in this Case.

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L. C. J. How came you to withdraw your self?

*Interpreter.* He says, one *Markham* told him, the common People did name him as concern'd in

it: And he was afraid the People might tear him to Pieces before he cou'd come to Justify himself: He says he had not above ten or twelve Pound about him, so ill was he provided for an Escape.

*Markham* appear'd and testified to this purpose.

*L. C. J.* How came you to tell those Gentlemen, you believ'd Mr. *Uratz*, and the rest, wou'd do the Duke of *Monmouth* no Harm?

*Interpreter.* Because the Crowd that were about him had said, that they did follow the Coach a great way, and wou'd not do the Action till the Duke of *Monmouth* was out of the Coach, which gave him sufficient Reason to say so.

*L. C. J.* What did you mean when you said it wou'd be a stain to your Bloud, &c.

*Interpreter.* He says, tho' he knew himself Not-Guilty; yet his being taken upon Suspicion, and clapp'd up in Prison, wou'd be a great Disgrace to him, and worse resented in his Country than the Thing it self was: It being not the Custom of his Country to take Persons of his Quality Prisoner in that manner.

*Sir Nath. Johnson.* He desires to say something to his Reputation.

*L. C. J.* Speak what you please, but be not too long.

The Count  
appeals to his  
own, and the  
Character of  
his Family.

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The King's  
Council en-  
force the Evi-  
dence.

*Sir Nath. Johnson.* He thinks it a great Happiness to appear before a Protestant Judicature, being himself a Protestant: He says his Fore-fathers were Soldiers under *Gustavus Adolphus*, that it has been the honour of himself and Family, that they have always been ready to venture their Lives for the Protestant Religion; and that if any of his former Actions can give the least Suspicion of his being Guilty of this or any foul Act, he is very willing to lay down his Life, and be cut off immediately: That he hath been very ready to serve the King of *England*, and that he loves the *English* Nation; that he has brought his Brother into *England* against the Will of his Relations, that he might be brought up in the Protestant Religion, and to shew his Inclinations to the *English* Nation.

*Sir Fr. Win.* My Lord, and you Gentlemen of the Jury: As to the Principals, I need not spend your



your Time about them, they have Confess'd the Fact; but can any rational Man believe from the Account they give themselves, that they had any delight in Killing this Innocent Gentleman; No, my Lord, there must be some other Reason why this Babarous Murder was committed; and the Count is a very unhappy Man to have such a Relation to the Principals; two of the Persons, *Uratz* and the *Polander*, were Persons relating to my Lord's Family, as Servants, and *Uratz* was frequently with him, not only to the very Day this Bloody Fact was done, but after that great Crime was committed; and it makes the Suspicion the greater, that *Borasky* who has done this Murder, and has been so much under the Command of this Lords Family, shou'd come over but two Days before, and the Count provide him with a Sword that very Day, for he had it on the *Sunday* Morning when he went away with the Boots under his Arm, and the Campain Coat upon his Back, with the Buff Coat under it, and he never return'd till the Fact was committed, and your Lordship and the Jury see what kind of a Creature he is, likely to do any Thing, being at the Command of so Great a Person: And, by the way I must observe, the Witnesses are most of them my Lords own Friends, unwilling to tell the Truth until we get it, and that very hardly from them; and pray, consider Gentlemen, where shall a Man go for the Original of this Business? Do you, or can you think it was begun, invented and contriv'd, by yonder three Men? To what End or Purpose, or for what Advantage to them? I will not use any thing of Argument to perswad the Jury, but I cannot chuse but say, we know no where to go for the Author of this Villainous Fact, nor whom to Accuse as the prime Contriver but the Count before you.

When he ended his Speech, the People shouted, which the Court reproved them for.

*Mr. Williams.* As for the three Persons at the Bar, it is very notorious, they are guilty of this hellish Murder, all the difficulty is how far the Count is Guilty; he is accus'd of being Accessary before

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before the Fact; of contriving and laying the Train which these Persons were to Fire: Now considering the Nature of the Thing, 'tis impossible to give you clearer Evidence than what you have had: Pray consider, Gentlemen, how this was carried on, here is *Uratz*, who was the Commander, and *Borosky* the *Polander*, who had been his Servants, immediate Actors in it; *Uratz*, he had a great Confidence in him, he came over with him, he eat of his Bread, and lay in his Family, and was he not a likely Man to do this for his sake who has Cherish'd him? Or for whose sake can it be thought to be? And why shou'd the *Polander* do it? He had no reason to do it upon his own Account, for he never saw the Face of Mr. *Thynn*, but was brought Hood-wink'd in a manner to the Fact, and whether it was not done for the Count's sake you are to Consider? Here is *Hanson*, his Brother's Taylor, acknowledges that there was mention made of requiring Satisfaction of Mr. *Thynn*, and enquires, what might be the Consequences by the Laws of *England*, in Reference to my Lady *Ogle*: And you will observe that all his Acquaintance and Friends, the managers of the Business, and those consulted with about it, are all Outlandish-men; I cannot say they are all Guilty, but I will say this makes our Proof more difficult: Nor has he given any rational Answer as to his Lurking and Hiding himself ever since he came to *England*; he tells you, indeed, he labour'd under a Distemper that he wou'd not have Discover'd, and yet next Morning after the Fact was done, he values neither Disease nor Physick, but goes by Water, and made an Attempt to fly Abroad. And will any one believe, that when *Uratz* came over with the Count, Lodg'd with him here, was every Day with him in familiar Conversation, shou'd come that Morning before, and in the Evening immediately after, and stay with him so long, and yet the Count be Innocent? Will not any Man rather absolutely conclude him an Accessary to the Murder? And as to his pretended Fears of the People to excuse his Flight, he knew the Temper of our *English* Nation well enough, to know they do not presently

presently fly in Mens Faces; and that he might, without Danger, Resign himself up to the Law if he were Innocent.

L. C. J. Gentlemen, The Council for the King having been very large in repeating the Evidence, I shall not go over it again in the same Method, but direct you a little as to some Points of Law: I must tell you, Gentlemen, When one Man Shoots another, and two are with him, who do nothing but come on purpose to countenance the Fact: It is Murder in them all; now *Uratz* and *Stern* acknowledge themselves to be there at the Murder, and the least they say is, that they came to countenance Fighting with Mr. *Thynn*, for Captain *Uratz* makes this his Excuse, that he intended to Kill him fairly, as he calls it, and the others were to stand by, to let him make the best of it, so that they all came with a murderous Intent, and a Murder follow'd; so that you have very little to consider as to these three Men, they seem all to be Guilty of this Murder.

As to Count *Coningsmark*, the Question will be, Whether he Commanded, or gave any Direction to have this Murder committed, that is the Thing that is now charg'd, and without that he cannot be Accessary in this Case: Indeed, it has been said by the Council, that will be all one, whether it were with the Knowledge of Count *Coningsmark* or not, but the Law is not so, for if a Gentleman has an Affront given him which he does seem to Resent; if any of his Servants officiously, without acquainting him with it, out of too much Zeal, and too forward a Respect to their Master's Honour, will go and Pistol and Kill him, that they apprehend has Affronted their Master, he not knowing of it, it will not charge their Master with any Guilt at all, so that it will return to this, Whether there be any Proof that Count *Coningsmark* did Consent to this Murder, or any ways Countenance the Killing of Mr. *Thynn*, or Command any of these Persons to do it, if he did, then he is Guilty as Accessary before, and you must find it; but if you believe he did not know of it till after the

Page 34.

L. C. Justice directs the Jury.

It is Murder in all that are present and countenance the Fact, tho' but one commit it.

He that Commands or Procures it, is an Accessary before the Fact tho' absent.

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the Murder was done, then he is Innocent, and you must Acquit him.

The Principals found Guilty. The Count Acquitted.

The Count to give Security in Case of an Appeal.

The Jury withdrew, and within half an Hour brought in the three Principals Guilty. And the Count Not-Guilty.

The Court Order'd to take a Recognizance of the Count, with Three Sureties, to appear the next Sessions, and answer any Appeal if brought.

The other Three were brought to the Bar, and it was demanded of them respectively, Why the Court shou'd not give Judgment upon them to Die according to Law.

*Uratz* answer'd, He was never rightly Examin'd or fairly Try'd.

*Stern* said, He did it for the Captains sake.

Page 36.  
Sentence pass'd upon the others.

Then being all tied up by the Executioner, the Recorder pronounced the Sentence, the Judges being gone off the Bench.

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*The Tryal of NATHANIEL THOMSON, WILLIAM PAIN, and JOHN FARWELL, 20 June, 34 Car. II. 1682.*

Sir Rob. Sawyer.  
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The Information; the Substance of it.

THE Information was in the Attorney General's Name, and it was for the Writing, and Printing, several Libels about the Death of Sir *Edmondbury Godfrey*.

It sets forth, that *Green, Bury, and Hill*, were Indicted for the Murder of Sir *Edmondbury Godfrey*, and thereof Convicted and Attainted; and that the said *Green, Bury, and Hill*, were executed for it: That upon their Tryal for the Murder, several Witnesses were examin'd, viz. Mr. *France, Bedloe, Curtis*, and some others, to prove Sir *Edmond* was murder'd at *Somerset-hause*; and that before the Tryal, there was an Inquest taken by the Coroner of *Middlesex*, by which it did appear, that Sir *Edmondbury Godfrey* was murder'd by Persons unknown. But that the Defendants, to reflect upon the Justice of the Nation, and scandalize the Witnesses produc'd at that Tryal, and

to



to make it believ'd that the said *Green, Bury, and Hill*, died wrongfully, did Write and Print several scandalous Libels and Letters, one of them Intitul'd, *A Letter to Miles Prance, concerning the Murder of Sir Edmondbury Godfrey*, and therein did suggest, that Sir *Edmond* had been *felo de se*; and also did reflect upon every one of the Witnesses, as if they had contradicted themselves. And also did reflect upon the Coroner, as tho' he had bribed the Jury. And have undertaken by these Arguments, and such others as are hereafter mention'd, to prove that Sir *Edmondbury Godfrey* murder'd himself. And that in another Libel, which Thomson Printed, call'd *His Loyal Protestant Intelligence*, he said he would make it out by a Cloud of Witnesses; and that this they have done against the King's Peace, and in order to defame the Justice of the Nation, &c.

Mr. *Clare* was sworn, and produc'd a Copy of the Record of the Conviction and Attainder of *Green, Bury, and Hill*, for the Murder of Sir *Edmondbury Godfrey*. As also, a Copy of the Inquisition taken by the Coroner of *Middlesex*, upon View of the Body, whereby he was found to be murder'd by them, strangled with a Cord by Persons unknown. Both which were read.

Page 41.  
The Record of *Green, Bury, and Hill's* Conviction prov'd, and the Inquisition taken by the Coroner.

*L. C. J.* This Matter of his being thus strangled, was found, before it was discover'd who did the Murder; and upon sight of the Body, they supposed it to be done by a Cord, but afterwards it came to light that it was done with a Handkerchief.

Sir *Fr. Pemberton*.

Mr. *Thomson*. (To the Defendants Counsel) if you will put us to prove all, we must prove that these Men were Executed.

Captain *Richardson* Sworn.  
*L. C. J.* Were these Men Executed for this Murder?

The Execution of *Green, &c.* prov'd.

Capt. *Rich.* Yes, I saw them Executed.

Mr. *Prance* was sworn, and Mr. *Curtis*.  
Mr. *Thomson*. Did you give Evidence upon the Tryal of *Green, Bury, and Hill*, for the Murder of Sir *Edmondbury Godfrey*?

*Prance's* Evidence.

*Prance.*

*Prance.* Yes, and *Brown* and *Bedloe* were Witnesses too.

*Mr. Thomson.* Mrs. *Curtis*, were you a Witness at the Tryal?

*Curtis.* Yes, I was.

*Sir John Nicholas*, *Sir Philip Loyd*, and *William Bridgman*, Esq; were sworn, and the two Letters mention'd in the Information were shewn them.

*L. C. J.* Were these shewn to the Defendants, *Thomson*, *Pain*, and *Farwell* at the Council?

*Sir Philip Loyd's Evidence.*

*Sir Philip Loyd.* These are the same I know, because I endorsed them: *Thomson* own'd the Printing of both, and one other of the Defendants own'd the Writing of one of them, and the other of the other.

*Mr. Finch.*

*Mr. Solicitor General.* Did *Pain* and *Farwell* own the bringing of both to *Thomson* to print?

*Sir Philip Loyd.* One own'd the one, and the other the other.

*Mr. Saunder.* Which was that *Farwell* did own?

*Sir Philip Loyd.* *Farwell* own'd the first, and *Pain* the second.

*Mr. Talding.* Did he readily discover his Authors?

*Sir Philip Loyd.* Yes, he did.

The first Libel read.

*Associat.* The Title is thus, *A Letter to Mr. Miles Prance, in relation to the Murder of Sir Edmond-bury Godfrey.*

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*L. C. J.* Read all of it. Which was done.  
Dated *Cambridge*, 23. *Feb.* 1681. Subscrib'd *Trueman.*

*London*, printed for *M. G.* at the Sign of *Sir E. B. G's Head*, near *Fleet Bridge.*

The second Libel.

*Sir Fr. Winnington.* Now read the other Letter.  
*Associat.* This is Intituled, *A Second Letter to Mr. Miles Prance, in Reply to the Ghost of Sir Edmond-bury Godfrey.* Which he read through also:

Page 46.

Dated *Cambridge*, 13th *March* 1681. and subscribed *Trueman.*

*London*, printed for *N. Thomson*, 1682.

The Protestant Intelligence read.

Then the *Associat* read a Paragraph out of the Paper, Intituled, *The Royal Protestant Intelligence*, Number 125. dated *Tuesday, March 7.* 1681.

Then

Then a Paragraph out of another *Intelligence* was read, *Numb.* 127. dated *Sat. March* 11. 1681.

Mr. *Serjant Maynard*. You see what they have done: They say what was testified against the Murderers of Sir *Edmondbury Godfrey*, was a Lie. They go over all the Evidence given against these Fellows, and undertake, by undeniable Witnesses, to prove the contrary.

*L. C. J.* (To the Defendants Counsel.) What say you to it?

Mr. *Saunders*. I am of Counsel for *Pain*, my Lord, the Charge against *Pain*, is, that he should bring the Second of these Letters to be Printed. It was a rash, unadvised Act, but not out of any Malice: We will prove he was no Papist, nor any of his Family; this cannot justify, but it may extenuate the Fault.

*Pain's Counsel* acknowledges his Offence.

Mr. *Gooding*. I am of Counsel, my Lord, for *Pain*: We have made Application to Persons to Intercede for us. We are sorry for what we have done, and have offered to give any Satisfaction.

*L. C. J.* To me, he said, he would make it out by Five Hundred Witnesses, they would make it as plain as the Day.

Mr. *Talden*. I am of Counsel, my Lord, for *Thomson*, who I think was unfortunately drawn into the Business, by *Pain* and *Farwell*, tho' they turn all upon him now. It was a great piece of Ingenuity in him to discover his Authors, and it had been very mischievous if they had not been discover'd.

*Thomson's Counsel* excuse him.

Mr. *Osborn*. I am of Counsel for *Farwell*: It was a foolish Thing to do as we have done, but that is no Satisfaction. My Client says he hath several Witnesses.

*Farwell* produces his Evidence.

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*L. C. J.* Call them, they shall be heard.

*Hazard* was Sworn, and deposed that he was at the *Rainbow Coffee-House* with Mr. *Farwell*, and he desir'd him to go to the Place where Sir *Edmondbury Godfrey* was found; that he went with him, and that Sir *Edmond* was lying in the *White House* upon a Table, and his Shoes were clean, as he had been in a Hay-mow; and his Eyes were closed,

*Hazard's Evidence*.

*Batson's* Evidence.

closed, and that there were Gobbets of Blood by the Ditch side where he was found.

*Batson* was Sworn, and deposed that the Morning after *Sir Ed. Godfrey* was found in the Fields, he went with two or three Neighbours to the *White House*, and saw him lie upon a Table there; and that coming back again, they threw'd him something in a Ditch, where they said he lay, which they told him was Blood, but he would not say it was Blood; and going a little farther, he saw some more whitish Blood, but it look'd to him, more like Blood that was laid there, than any thing else.

*Fisher's* Evidence.

*Fisher* was Sworn.

*Mr. Farwell*. Was you there when *Sir Edmond-bury Godfrey* was stripp'd?

*Fisher*. Yes, I stripp'd him of his Cloaths, and pull'd off his Hose and Shoes: I saw two Wounds within an Inch and half of one another, one went no farther than his Bone, and the other went thro' his Back. When I came to his Back, there was Blood, but I did not see any Blood till I came to his Back part. About his Throat there was something that had girt him: He look'd as if he was strangled, and his Neck was so weak, that you might turn it any way.

*Rawson's* Evidence.

*John Rawson* Sworn.

*Rawson*. My Lord, I was there at the taking him up, we fetch'd the Constable, and pull'd him out of the Ditch; and when we had done, we pull'd the Sword out, and remov'd him to the House. And there dropp'd Blood upon some Stumps we went over, and at the going in at the Door, and likewise on the Table where he lay, and on the Floor.

*Mrs. Rawson* was Sworn, and deposed she saw Blood and Water run through the Table.

*Hobbs, White, Mr. Chase the Father, and Mr. Chase the Son, and Mr. Laxinby* were Sworn.

*Chase the Son*.

*Chase the Son*. My Lord, on *Friday* Morning, the Day after the Body was found, I went to *Primrose Hill* with my Father. I came into the Field where the Company said the Body had laid; I look'd into the Ditch, but could not see any Blood there;



there; but four or five Yards off the Ditch where the Body lay, there seem'd to be some Blood, which the Constable said follow'd the Sword when it was pull'd out of his Body. I saw the Body in the House, and the two Wounds: He had a great Contusion in the Left Ear, and his whole Face was very much bruised. My Lord, I believe he was strangled, for I don't believe those Injuries that were offer'd about him, could be after he was dead.

Mr. *Hobbs*. Indeed, my Lord, I thought he was strangled, that was my Opinion. His Face was bloated, and the bloody Vessels of his Eyes were so full. *Hobbs's Evidence.*

Mr. *Farwell*. Did you observe any Fly-blows?

*Hobbs*. No.

*Chafe the Father*. My Lord, on *Friday*, when I came to see the Body at the *White House*, I found a great Contusion, and two Wounds, one yielding towards the Right, the other went into the Body. The next Day I was desir'd by Dr. *Loyd* to go to his House, and see the Body again; and there I found a swelling upon the Left Ear, as if a Knot had been tied there. I found him beaten from the Neck to the Stomack, I never saw any Man beaten so in my Life. *Chafe the Father, his Evidence.*

Mr. *Brown* was Sworn.

L. C. J. 'Tis propos'd to you, by Mr. *Farwell*, whether the Eyes of Sir *Ed. Godfrey* were not Fly-blown. *Brown's Evidence.*

*Brown*. No, my Lord, I did not see any, or any Specks one might call Fly-blows.

Mr. *Farwell*. I pray Mr. *Lazingby* may be ask'd, whether Men that kill themselves, look as Sir *Ed. Godfrey* did? Page 49.

*Lazingby*. My Lord, he appear'd to me to be strangled; and that which strangled him, was kept about his Neck till he was cold. People that are hang'd, and let down warm, the Blood drains away by the Vessels that are broken; and their Faces are rather less, and become very pale: But the Thing wherewith he was strangled, remaining about his Neck, the Blood could not drain away, but it made his Face look bloody. The Blood

that was some four Yards from the Ditch, I put my Finger in it, and smelt to it, and it smelt'd like that which comes from a Body after a Fort-nights time dead, rather than a Weeks. My Lord, it was Blood and Water; the Water will separate from the Blood.

Unbuttoning his Collar, there were two great Creases above and below; so I put the Collar together, and perceived it made a mark like a strait Ring upon a Finger, the Neck being swell'd above the Collar and below, by the strangling with a Cord or Cloth. There was something in the Cover of his Eyes like Matter, but I can't say it was Fly-blown. His Eyes were open, and bloodshed, as if he had a great Cold, or a Man that had a blow upon the Temples or Forehead. His Cloaths were dry, which I admir'd at, there having been so great a Storm the Afternoon before.

*Farwell.* They made a Fire, and dried his Cloaths.

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*L. C. J.* Mr. *Farwell*, there is no Man so blind as he that wo'n't see.

The Chief Justice directs the Jury.

Gentlemen of the Jury, you see how *Farwell's* own Evidence, hath, in all Things, confirm'd the Evidence *Prance* hath given, that Sir *Ed. Godfrey* was kill'd, and that he was kill'd by Strangling. I must leave it with you: Gentlemen, they are all three in this Mischief, 'tis a Combination of them, to affront the publick Justice of the Nation; and the end of it is to make People believe there is no Popish Plot. But it is plain he was kill'd by the Popish Party, as *Prance*, upon his Evidence against *Green*, and the others, has attested. But if they could make it out that he kill'd himself, they would have cry'd out the Popish Plot was a Sham, rais'd by the Protestants against the Papists, and all the Plot must have gone for nothing. Gentlemen, I leave it to you, whether upon this Evidence you do not believe them all guilty of this Design, of traducing the Justice of the Nation.

They are all found Guilty.

The Jury, without going from the Bar, found them all three guilty of the Information; and the People gave a great Hum.

*Monday*

*Monday, July the 3d, 1682.* They were brought up by Rule to the *King's Bench Bar* to receive Judgment.

*Mr. Thomson.* The Counsel pray'd they might have some Corporal Punishment.

The Court having consulted together, *Mr. Justice Jones* pronounced the Judgment as follows.

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Sentence pronounced.

That *Thomson* and *Farwell* should stand upon the Pillory in the *Palace Yard*, the last Day of the Term, between the Hours of Ten and One a Clock, for the space of an Hour, and each of them pay One hundred Pound Fine, and be imprison'd till they paid it. That on *Pain* they would inflict no Corporal Punishment, but did adjudge him to pay One hundred Pound Fine, and to be imprison'd till he paid it.

The Court was afterwards mov'd to explain that Expression, *upon the Pillory*; and they declar'd it was to be understood, that they should stand in the Pillory; which they accordingly did, with this Writing over their Heads. *For Libelling the Justice of the Nation*, by making the World believe, that *Sir Edmondbury Godfrey* Murder'd himself.

To stand upon the Pillory, or in the Pillory, all one.

*The Tryal of FORD Lord GREY of Werk, ROBERT CHARNOCK, ANNE CHARNOCK, DAVID JONES, FRANCES JONES, and REBECCA JONES, 23 Nov. 34 Car. II. 1682. in B. R.*

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Proclamation was made for all Persons to appear, who could give any Information concerning the Misdemeanors and Offence whereof the Defendants stood Impeach'd. Then the Defendants being call'd, and appearing, were bid to look to their Challenges; and the Jury being all Gentlemen of *Surrey*, were call'd.

*Clerk of the Crown.* *Sir John Thomson.*

*Mr. Serjant Jefferies.* We challenge him for the King.

A Jury-man is Challeng'd for the King, without shewing Cause.

Mr. *Holt*. Then we challenge *touts per Availe*, unless the King shew his Cause of Challenge.

Sir Fr. Pemberton.

L. C. J. If they Challenge any Person for the King, they must shew Cause in due Time; for the King cannot Challenge without Cause, but he is not bound to shew his Cause presently. It is otherwise in the Case of another Person.

Mr. *Holt*. My Lord, we Challenge *touts per Availe*.

L. C. J. You must shew a Reason for it then: The old Challenge is taken away, by the Statute of the 24 Ed. I. from the King, *quia non sunt boni pro Domino Rege*; and therefore if the King Challenge any, he must shew Cause; but it must be in his time, and not before you shew yours. Let him stand by a while.

The Jury Sworn.

|                        |        |                 |
|------------------------|--------|-----------------|
| Sir Marmaduke Gresham, | } Jur. | Robert Gavel,   |
| Sir Edward Bromfield,  |        | Edward Bray,    |
| Sir Robert Knightley,  |        | Thomas Newton,  |
| Sigismund Stiddulph,   |        | John Halscy,    |
| Thomas Vincent,        |        | Tho. Burroughs, |
| Philip Rawleigh,       |        | John Pettyward. |

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Sir Rob. Sawyer.  
The Information.

The Information was brought in the Name of Sir Robert Sawyer, the Attorney General, and set forth that the Defendants, the 20 August, in the 34th Year of King Charles the IId, at *Epsom*, in the County of *Surrey*, did conspire the Ruin and utter Destruction of the Lady *Henrietta Berkley*, Daughter of the Right Honourable *George Earl of Berkley*. And for that end, they seduc'd her from her Fathers House, though she were under the Age of Eighteen Years, and under the Custody and Government of her said Father; and solicited her to commit Whoredom and Adultery with the said Lord *Grey*, who was before Married to the Lady *Mary*, another Daughter of the Earl of *Berkleys*, and Sister to the Lady *Henrietta*. That after they had thus inveigled her, they did upon the same 20th day of *August*, carry her away out of the House, without the Earl's License, and against his Will; to the intent she might live an ungodly and dishonourable Life with my Lord *Grey*.



*Grey.* And after they had thus carried her away, they obscur'd her in secret Places, and shifted about from Place to Place, and continued this Course of Life ever since, to the Displeasure of Almighty God, the utter Ruin of the Young Lady, the Grief and Affliction of her Friends, and Evil Example of all Others; and against the King's Peace, his Crown and Dignity. To which they all pleaded *Not Guilty*, and the Attorney General join'd issue upon it.

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The Lady *Henrietta* came into Court, and was set by the Table at the Judges Feet.

The Defendants plead not Guilty.

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*Earl of Berkley.* My Lord, my Daughter is here in Court, I desire she may be restor'd to me.

*Mr. Serj. Jefferies.* Pray, my Lord *Berkley*, give us Leave to go on; it will be time enough to move that anon. Swear my Lady *Berkley*, (which was done, but she was so disorder'd at the sight of her Daughter, that she could not give her Evidence.) Then the Lady *Arabella* was Sworn.

*Mr. Serj. Jefferies.* Madam, will you acquaint my Lords, the Judges, and Jury, what you know concerning the Letter you discover'd?

*Lady Arabella.* Some time in *July* last, my Mother coming to my Lady *Harriett's* Chamber, and seeing there a Pen wet with Ink, examin'd her where she had been Writing? She, in great Confusion, answer'd, she had been writing her Accounts. My Mother not being satisfied with her Answer, commanded her to give me the Keys of her Closet and Cabinet. When she gave me the Keys, she put into my Hands a Letter written to my Lord *Grey*, which was to this Effect, *My Sister Bell did not suspect our being together last Night, for she did not hear the Noise. Pray come again on Sunday or Monday: If the last, I shall be very Impatient.* I suppose my Lady *Harriett* gave my Lord *Grey* Intelligence that this was found out; for my Lord *Grey* sent his Servant to me, to acquaint me he desir'd to speak with me. When he came in first, she fell down upon the Ground like a dead Creature: My Lord *Grey* took her up, and said, you see how it is gone between

Lady Arabella's Evidence.

tween us, and declar'd he had no Love, no Consideration for any Thing upon Earth, but for her, I mean dear Lady *Hen.* said he to me; and told me, he would be reveng'd of all the Family if they expos'd her. I suspected my Woman had a hand in this, and when my Lady *Harriett* run away, I charg'd her with it: She swore she had never carried any Letters between them; but after my Mothers coming to *London*, both the Porter of *St. Johns*, and one *Thomas Plomer*, accus'd her, that she had sent Letters to *Charnock*, who was my Lord *Grey's* Coach-man, now his Gentleman. And upon this she confess'd she had sent Letters to *Charnock*; but said, how could I think there was any Ill between a Brother-in-Law and a Sister?

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*Mr. Serj. Jefferies.* Please, Madam, to turn your Face towards the Gentlemen of the Jury, who have not heard what you said, and let them have the same Story. Whereupon she repeated what she had said, but my Lord *Grey* standing up, and looking her in the Face, put her out of Countenance, and she stopp'd; for which the Court check'd him, and he sat down, and then she went on again, as above.

*Mr. Serj. Jefferies.* Pray, my Lady *Berkley*, will you tell what you know?

*Lady Arabella.* I have something more to say: That is, I told my Lady *Harriett*, after my Lord *Grey* had made his Declaration of his Love to my Sister, that if ever he had the Impudence to name her Name to me, I would immediately go to my Father, and tell him all.

Lady Berkley's  
Evidence.

*Lady Berkley.* When I first discover'd this unhappy Business, how my Son-in-law, my Lord *Grey*, was in Love with his Sister, I sent to speak with him, and I told him he had done barbarously, and basely, and falsely with me, in having an Intrigue with his Sister-in-law. That I look'd upon him next my own Son, as one that was engag'd to stand up for the Honour of my Family, and instead of that, he had endeavour'd the Ruin of my Daughter, and had done worse than if he had Murder'd her, to hold an Intrigue with her

her of Criminal Love: He said, he did confess he had been false and base, and unworthy to me, but he desir'd me to consider (and then he shed a great many Tears) what it was that made him Guilty, and that made him do it. I bid him speak. He said he was asham'd to tell me, but I might easily guess. I then said, What! Are you indeed in Love with your Sister-in-law? He fell a Weeping, and said he was Unfortunate, but if I made this Business publick (he did not say this to threaten me) but if I told my Lord, her Father, and his Wife of it, it might make him Desperate, and it might put such Thoughts into his Wives Head, that might be an occasion of Parting them, and that he being Desperate he did not know what he might do, he might neither consider Family, nor Relation: I told him this wou'd make him look very black in Story, tho' it were her Ruin. He said, that was true, but he could not help it: He was Miserable, and if I knew how Miserable, I would Pitty him: He had the Confidence to tell me that. And then he desir'd, though he said I had no reason to hear him, or take any Counsel he gave me (and all this with a great many Tears) as if he were my Son *Dursley*, that I would keep his Secret, for my Lord, if he heard it, would be in a great Passion, and possibly he might not be able to Contain himself, but let it break out into the World. He may call me Rogue and Rascal perhaps in his Passion, said he, and I should be Sorry for it, but that would be all I could do. And what the evil Consequence might be, he knew not, and therefore it were best to Conceal it. He said he was to go out of Town with the D. of *M.* in a few Days, and being he had been frequently in the Family before, it would seem strange if he did not appear there to take his Leave, and that if for the World's sake, and for his Wife's sake, (that no one might take notice of it) I wou'd let him come there and Sup before he went into the Country; he would not offer any thing by way of Letter, or otherwise, that might give me any Offence; upon which I did let him come, and he came in at Nine a Clock at Night: After Supper

he went away, and the next Night he sent me a Letter, wherein he says he should not go out of Town.

Mr. Justice Dolbin. Be pleas'd, Madam, to put it into Court.

Cl. of the Crown. There is no Direction upon it: It is subscribed Grey. [He reads.]

A Letter of  
the Lord  
Grey's read.

" Madam, After I had waited on your Ladyship last Night, Sir Thomas Armstrong came from the D. of M. to acquaint me that he cou'd not possibly go into *Sussex*, so that Journey is at an end. But your Ladyship's Apprehensions of me, I fear will continue, therefore I send this to assure you, that my short stay in Town shall no way disturb your Ladyship, if I can contribute to your Quiet by avoiding all Places where I may possibly see the Lady. I hope your Ladyship will remember the Promise you made to divert her, and pardon me for minding you of it, since it is to no other end that I do so, but that she may not suffer upon my Account; I am sure if she doth not in your Opinion, she never shall any other way. I wish your Ladyship all the Ease that you can desire, and more quiet Thoughts than ever I expect to have, I am with great Devotion, &c.

Mr. Serj. Jefferies. My Lady Berkley, will you please to go on.

La. Berkley. When I came to my Daughter (my wretched unkind Daughter) she fell into Tears, and beg'd my Pardon for what she had done, and said she would never continue any Conversation with her Brother-in-law any more, if I would forgive her: I told her, I did not think it safe for her to continue at my House for fear the World should discover it, by my Lord Grey's not coming as he us'd to do, and therefore I would send her to my Son's Wife, her Sister *Dursley*, upon which she wept bitterly, and begg'd heartily I wou'd not send her away to her Sisters, and told me it would not be safe for her to be out of the House from me: She confess'd she had wrought to my Lord Grey that they were discover'd, which was the Reason he did not come to me upon the first Letter I sent him:



him: And believing her penitent, I told her I would not tell her Sister *Dursley* her Faults, nor send her thither till I had spoke to her again: Afterwards my Daughter *Grey*, my Lord *Grey's* Wife, coming down to *Durdants*, and he being to go to his own House in *Suffex*, he writ to his Wife to come up to *London*, that he might speak with her before he went: My Daughter *Grey* desir'd he might come thither, and it being his way to *Suffex*, I writ him word he might call at my Lord's House, and dine there in his way to *Guildford*. He, instead of coming to Dinner, came at Nine at Night, but I thought if I turn'd him out, my Lord and the Family would wonder at it, therefore I was forc'd to let him lie there that Night: He told me, he had not come but upon my Letter, because I was to give him leave to come, I told him after the Promises he had made me, and the Indulgence I had shewn him, I hop'd he wou'd give my Daughter no Letters; He told me he would stay no longer than the next Day, but his Wife and my Lord, desiring his stay, I had a very hard task of it: And while he was there, he had the Confidence to entertain me with his Passion; I told him he should stay no longer, and if he did, he shou'd see his Sister *Harriett* no more; To which he reply'd, *Madam, Indeed it is rude in me to say it to you, but I must say it, Give me my Choice either to be Drown'd or Hang'd.* I told him I was not satisfied he should stay in *England*, having ordered his Wife to go to *France*, within a Month, I wou'd have him go with her, and if he would not, I would tell her Father; upon this, he promis'd me with all the Oaths and Imprecations in the World, that he would go and follow his Wife into *France* at *Christmas*, and stay there Eight Months, and by that time I did hope this unfortunate Business might be over: I ordered him to go from the House, which he promised to do on *Saturday*: And then I went up to my Daughter *Harriett's* Chamber, where I found her Melancholly, and endeavoured to comfort her, and bid her trust in my Friendship; and I was confident I could bring her clear off this troublesome Business:

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ness: She said her Sister *Grey* would not forgive her, I said I was sure she would, and I would do all that lay in my Power to assist her. She was to blame indeed, she acknowledg'd, but she was Young, and he was Cunning, and had made it his Business to delude and entice her: I told her she must consider with her self what was to be done to bring her off, she promised me so to do, and yet that very Night, when I was in my Sleep she ran away.

(*Here the Lady Berkley swounds, when she recovered she said,*) My Lord *Grey* went away about four a Clock the Afternoon before.

Then a Clergyman was sworn.

*Mr. Serj. Jefferies.* Pray Sir will you tell my Lord and the Jury what you know.

A Clergy-  
man's Evi-  
dence.

*Clergyman.* My Lord, I was at *Durdants*, my Lord *Berkley's* House, near *Epsom* in *Surrey*, at the time of this ill Accident. That *Saturday* after Dinner, I walked into the Great Hall, and my Lord *Grey* came in and walked there very thoughtfully, then he stepped into the Steward's Hall, where the Gentlemen were at Dinner, and call'd *Charnock* to him; he took him to the Foot of the Stairs and talked with him very earnestly for some time, and then went away, and he afterwards sent for *Mr. Charnock* several times: And *Mr. Rogers*, my Lord *Berkley's* Chaplain, telling me about three Weeks after that *Charnock* was the Man that carried her away that very Night, it came into my Mind that earnest Discourse my Lord *Grey* had with him, and his so often sending for him.

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*Mr. Serj. Jefferies.* This was upon *Saturday* Night she went away; we shall prove that this *Charnock* was at eight a Clock next *Sunday* Morning with a young Lady here in *London*: In what Habit that young Lady was our Witnesses will tell you.

*Mr. Att. General.* But I think it will be proper first to examine my Lady *Lucy*: Pray, Madam, acquaint the Court what occasion you had to go to *Guildford*, and the Conference between you and my Lord *Grey*.

Lady

*Lady Lucy.* As soon as my Lady *Harriett* was missing, I went after my Lord *Grey* to *Guildford*, and told him my Lady *Harriett* was gone away, and conjur'd him to prevent so great a Misfortune as this would be to the Family : He pretended he knew nothing of her going, and if he could find her he would perswade her to return Home, but he would not force her ; he parted from me to go to *London* ; I begged I might go along with him, supposing I might retrieve the Business ; but he deny'd me and went away ; I met him two or three Days after, and he pretended he did not know where she was, but he knew where to send to her, and he would do all he could to get her to return Home. But soon after he went to *Up-park*, as he said, to show us he was not with her : He afterwards writ me a Letter that he could not perswade her to return Home ; but the Conclusion of it was, he would do all he could to restore Peace and Quiet to the Family, which by his Follies were so miserably disturb'd.

*Lady Lucy's*  
Evidence.

*Lady Arabella.* My Lord, about six Weeks ago, he told me at my Lord Chief Justice's Chamber, That he had my Lady *Harriett* in his Power, or in his Protection, or to that effect.

*Eleanor Hilton* was sworn.

*Mr. Att. General.* Did *Charnock* come to your House with a young Lady the 20th of *August* last.

*Hilton.* It was about eight or nine Weeks ago, upon a *Sunday*, but what Month it was I can't tell.

*Hilton's* Evi-  
dence.

*Mr. Jefferies.* Well what did you see then.

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*Hilton.* Mr. *Charnock* came and ask'd me if I had any Room to spare ; I shew'd him what we had, and he went away ; and afterwards there came a young Lady to our House by her self, but who she was, I cannot tell : She had a colour'd Nightgown on, of several Colours, and a Petticoat White and Red.

*Serj. Jefferies.* Do you know the Lady ? Did you see her Face !

*Hilton.* I can't say I did fully.

Mr. *Serj.*

Mr. Serj. Jefferies. To the Lady Harriett. Pray, Madam, will you stand up a little, and turn up your Hood? Which she did.

Hilton. Truly I can't say that is the Lady.

Mr. Att. Gen. Did she not come to lodge at your House?

Hilton. She staid there but a while, and went to Mr. Patten's, in *Wildstreet*. I went with her, but she lay down first at our House.

Mr. Serj. Jefferies. Was there any Letter brought to your House for Charnock?

Hilton. Yes, I brought it to Mrs. Charnock.

Mr. Serjant Jefferies. What time did she lie down?

Hilton. About Nine or Ten in the Morning; she said she was weary.

Mr. Serj. Jefferies. What Company came to her while she was at your House?

Hilton. No Body but Mrs. Charnock.

Mr. Serj. Jefferies. My Lady Arabella, pray what Cloaths did my Lady Harriett go away in?

Lady Arabella. She had such Cloaths as they speak of, but I can't say she went away in them.

Mrs. Doney was Sworn.

Mr. Att. Gen. Did you lie with my Lady Harriett when she stole away?

Doney. Yes, and she went away in her Morning Cloaths. It was a strip'd Night-Gown of many Colours, and a Petticoat of White and Red, and a Quilted Petticoat.

Mr. Patten was Sworn.

Mr. Sol. Gen. Pray tell my Lord, concerning Mr. Charnock, and his Wife's coming to your House?

Patten. About the latter end of July, or the beginning of August, Mr. Charnock and his Wife came to my House to take Lodgings for a Person of Quality, who, they said, would not want them, till the middle of September. About the 20th of August, being Sunday, Mrs. Hilton, brings a Gentlewoman, with Mrs. Charnock, to my House. I told Mrs. Charnock, we had no Lodgings fit for a Person of Quality, but Mrs. Hilton took the Candle and ran up Stairs, into a Room where there

was

Doney's Evidence.

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Patten's Evidence.



was a Bed, but no Hangings, where they lock'd themselves in. They wou'd not go into the Dining Room, because they said the Light would be seen into the Street; and order'd, if any Body came to inquire for Mrs. *Charnock*, or Mrs. *Hilton*, I should say there was no Body there. Presently after, a Letter was carried up Stairs to them, upon which they came down, and went up the Street: And when they were gone a little way on Foot, Mrs. *Charnock* desir'd them to turn back again, for she hop'd to get a Coach, which she did, and then they went away. The next Day, Mrs. *Hilton* came to our House again; I ask'd her what Gentlewoman that was, that was here the Night before: She said she could not tell, but believ'd it was some Person of Quality, for Mrs. *Charnock* brought her to their House at Seven a Clock in the Morning: That she seem'd much troubled, they could get her to eat nothing, and her Eyes were very red with crying; and that they came away to our House at Night, because they heard a Noise of People in the Street, and were afraid some of her Father's Servants were come, but it was only some People that were gathered together to see the blazing Star; so they whipp'd out of the back Door, and came to our House.

*Serj. Jefferies*. Do you know the Lady again? pray, Madam, lift up your Hood?

*Patten*. This is the Lady, I saw her Face twice, though she hid it as much as she could.

Then *Mary Fletcher* was Sworn.

*Serj. Jefferies*. Pray tell the Court, when my Lord Grey came to your House?

*Fletcher*. My Lord Grey came to *David Jones's* at *Charing-Cross*, in a Hackney-Coach, first, the Monday after my Lady *Berkley* was missing, without a Peruke, and desir'd Mr. *Jones* to come to the Coach side; then they came into the House, and went up two pair of Stairs to look on Lodgings, and I had Orders to make ready the Room for some Lodgers who were expected that Night, but did not come till the next Day. On Tuesday, about Nine a Clock, my Lord Grey came again in a Coach to the Door; he threw his Cloak over his Face,

*Mary Fletcher's Evidence.*

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Face, and was then without a Peruke too; he desir'd to speak with my Master, who after he had been at the Coach side, order'd us to go down, and keep down in the Kitchin; and afterwards my Fellow-Servant and I were bid to go to Bed, and my Mistrefs shut up the Shop Windows her self. The Warming-Pan, and other Things were carried up by my Mistrefs's Sister into the Chamber, and after a while came in some Company that staid all Night; I was not admitted into the Room while they were there, but through the opening of the Door, I saw one Lady in Bed: I can't say that is she, for when she perceiv'd I peep'd into the Room, she pull'd the Cloaths over her Face. She staid in the Lodgings nine Nights.

*Serj. Jefferies.* What did Mrs. Jones say to you about my Lord Grey?

*Maid.* She said, what Fools were we to say this was my Lord Grey, it was a Country Gentleman; but I am sure it was he, for all his Disguise; I can't say my Lord Grey staid there. At the same time Captain Fitz Gerrard lodg'd in our House; and the Monday se'night after my Lord Grey came there, he call'd me to his Bed-side in the Morning, and asked me, if I could tell him who the Lady was? I told him I could not tell any thing, I could never see her.

*Serj. Jefferies.* Do you know what Linnen she brought with her?

*Maid.* Yes, I wash'd one Shift, and I said it could be no Person of Quality, because the Body was finer than the Sleeves.

Then Mrs. Doney was call'd again.

*Mr. At. Gen.* Pray did you show this Woman another of my Lady Harrietts Shifts?

*Doney.* Yes, it was the fellow to that she went away with; the Body was finer than the Sleeves.

Then Captain Fitz Gerrard was Sworn.

*Capt. Fitz Gerrard.* Six Months ago, I took a Lodging at Mr. Jones's. One Night coming home, my Servant told me there was a Lodger lately come to the House, who lay in the upper Rooms. He said the Maid of the House told him it was a Mistrefs of my Lord Grey's: I did not think my self

Fitz Gerrard's  
Evidence.

self oblig'd to take notice of the Discourse of the Servant of the House then, but four or five Days after, being in *Covent Garden*, where there was a Discourse of my Lady *Harriett Berkley's* being gone from her Father's. I came home, and having no Servant ready to wait on me, Mr. *Jones* came very kindly to put me to Bed. I told him, he could not but hear of the Report of my Lady *Berkley's* being run away from her Father, and I know you have a Dependance on my Lord *Grey*: I have a suspicion you conceal her in your House; and advised him as a Friend, to discover the Lady to her Friends. He seem'd very Angry at this, which made me think the more of it; and I told him I was resolv'd to go into the Room, and know who this Lady was. He grew very Angry, but I went to my Sword, and was going up. Says he, pray Mr. *Fitz Gerrard* do not offer such a Thing; you would take it unkindly to have your House search'd at this time of Night, and promised me I should see the Lady to morrow Morning, whereupon I desisted. I went out early in the Morning, and returning between Eleven and Twelve, desir'd I might see the Lady then; but he told me she was gone: So that I never saw the Lady then, nor in my Life, but once or twice at *Epsom*.

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Then Mr. *Smith* was Sworn.

Mr. *Smith*. Before my Lord *Berkley* made this Thing publick, he propos'd that if my Lord *Grey* would not prosecute her with any more Visits, he would give a Sum of Money to marry her. I went to my Lord *Grey*, and told him my Lord *Berkley* would give Six Thousand Pound with her, if he would place her in a third Hand, where it might be convenient to treat with any one about it. He talk'd as if he knew where she was, but wou'd not discover it. He said she was beyond Sea, but if they would give him leave to Visit her sometimes, she shou'd come again. He said he wou'd write to her that Night, but it wou'd be some Time before she got to Town; but, he said, if he should bring her to Town, my Lord *Berkley* would disturb her with my Lord Chief Justices Warrant.

*Smith's Evidence.*

When

When I spoke to my Lady *Berkley* of it, she in-  
gag'd there should be no Search made, if he wou'd  
bring her to any Place, where my Lady *Lucy*  
might Visit her. Thereupon, my Lord *Grey* pro-  
mised to write to her: Whether he did or not, I  
cannot tell. Afterwards he said he had writ, but  
she would not come.

Mr. *Craven* was Sworn.

*Craven's Evi-  
dence.*

Mr. *Craven*. The *Wednesday* after my Lady  
*Harriett* went away, my Lady *Berkley* told me,  
my Lord *Grey* had proffer'd he would go into the  
Country for Six Months; and to shew he had no  
Designs upon her, if she would propose some Friend  
of hers to go with him, he would be very well sa-  
tisfied with it. And that her Ladyship had fixed  
upon me. I met my Lord *Grey* on *Wednesday*  
Morning, at Sir *Thomas Armstrong's*, and after-  
wards went down to his House to him.

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I made an Apology for my coming on such an  
Account. He said he had done a very ill Thing;  
he could not help what was past, but what was  
to be done for the future. I advis'd him to send  
her home again: He said he did not know where  
she was, but he had receiv'd a Letter from her,  
which he shew'd me; the purport of it was, that  
she was gone from her Father; but she did not  
think fit to let him know where she was, for fear  
he should deliver her up again. One Day, when  
we went out a Shooting, he said he would tell me  
the whole Intrigue between my Lady *Harriett*  
and him. Says he, I have had a great Affection  
for her, ever since she was a Child; when I first  
writ to her about it, she was very Angry, and  
threatned to disclose it to her Father and Mother;  
but that one Day, when my Lord *Aylesbury* was  
leading my Lady *Berkley*, and my Lord *Grey* was  
leading my Lady *Harriett*; she took my Lord  
*Grey's* Hand and squeez'd it against her Breast, and  
that was the first time he perceiv'd she lov'd him;  
and then she told him he should go to *London*  
with them, and he did go; and from that time,  
for a Twelvemonth before she went away, he did  
see her almost every Night. And though my  
Lady *Berkley* put a *French Woman* to lie with her,  
yet



yet she did use to rise from the *French Woman*, and he did use to see her. And one Day, says he, do not you remember you came to the Chamber Door, and she was angry at your coming; and that the Door was not bolted, and if you had come in, you had found me there? And, says he, you cannot imagine what I have suffer'd to come to see her: I have been two Days lock'd up in her Closet, without Meat and Drink, but only some Sweetmeats. He said, he did all he could to divert his Passion, and would fain have avoided bringing such an Infamy on his own Family, and his Lady's. He endeavour'd to cool his Passion, by making Love to two other Ladies, whom he courted and enjoy'd both of them, but all did signify nothing, he could not subdue it. I intimated the Danger he might be in from the Law: He said he had consider'd of that before, and they could not do any thing in Law against him for it; let them, says he, examine the Case of Mrs. *Hensage* and my Lord *Cavendish*. He said he could not persuade her, and he would not betray her. He own'd he had her in his Power, but he would not part with her, never to see her again.

*Lord Cavendish*. This Mr. *Craven* has very impertinently mention'd my Name; I desire to know why my Name was mentioned, more than the two Ladies Names.

*Mr. Craven*. My Lord *Grey* did not mention the two Ladies Names to me.

*Lord Grey*. No, nor my Lord *Cavendish*'s neither: 'Tis all a Lie. My Lord, I desire I may speak something for my self: Certainly, my Lord, no Man ever lay under a more infamous Accusation than I now do; my Honour lies here at Stake, and if my Life did so too, I am not, nor should be more concern'd to save that, than I am to clear my Reputation, which is, and ought to be, very dear to me. My Lord, were I guilty of the Villanies that here are laid to my Charge, I certainly should need no other Punishment; I am sure I could not have a worse, than the Reflection of my own Conscience for them; and I ought to be banish'd the Society of Mankind. My Lord, I

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must confess I have been so unhappy (though it is more than they could else prove) as to have a very great Kindness for this unfortunate young Lady, but yet not so Criminal a one, as the Witnesses would have you to believe; or as the Information would insinuate. I here protest I was no way assisting to her Escape, nor privy to it: Nor have I ever at all since detain'd her from her Father, though I have suffer'd a Fortnights close Confinement and Imprisonment for it. When I came to Town, I was one Day at the Coffee-house in *Covent Garden*: I was then sent to by this Lady, who was in a Hackney Coach at the Door; and when I came to the Coach side to her, she gave me a tedious History of her ill Usage at home, which made her come away. And when your Lordships Warrants were out to search for her, I came to your Lordship. And I dare appeal to your Lordship, whether I did not acquaint you, that she only sought for Protection, and was willing to return Home, so she might be satisfied she should not be ill treated again. You then told me, I could not protect her against her Father. I told your Lordship, and my Lady *Berkley*, she was not in my House, nor in my Custody. They replied she was in my Power, but how could she be in my Power, when she was not in my Custody, nor in my Lodging; but my Crime was, that I knew where she was. And if I do deserve Punishment for keeping my Word and Faith with her, which I gave her in a Letter, upon her Importunity not to betray her, I must submit to it; I could not in Honour do otherwise. My Lord, I desire this first Letter may be read, which was first sent by my Lady *Harriett* to me.

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Mr. *Williams*. We shall go on to our Evidence, and begin with my Lady *Berkley* first: We desire to know if she hath seen this Letter?

L. C. J. Take Notice, this Letter you propose, we cannot read it.

Mr. *Williams*. But my Lord, it was agreed between my Lady *Lucy*, and my Lord *Grey*, that if he received any Letters from my Lady *Harriett*, he should communicate them to my Lady *Berkley*; and

and this Letter coming to him, he first shews it to *Craven*, this Man that was set as a Spy upon him, and after sent it to my Lady *Lucy*, and whatsoever Answer they would have sent, was promised should be; and accordingly was first shewn to *Craven*, and then sent. If this were the Agreement, and these Letters were thus Written, then sure we may read them.

*L. C. J.* You may ask my Lady *Berkley* any Questions, but must not read any such Letters.

*Mr. Williams.* Pray, Madam, can you remember what my Lord *Grey* promised your Ladyship, when you sent for him, upon the Discovery of this Matter?

*Lady Berkley*  
Cross-examined.

*Lady Berkley.* He told me then, he would obey me in any Thing, even if I would banish him my House.

*Mr. Williams.* Was there any Letter then produced by your Ladyship, or my Lord *Grey*?

*Lady Berkley.* No, but I told him of a Letter that was found, that she had writ to him. I did not read it; my Daughter *Bell* read it, and tore it to pieces.

*Mr. Williams.* Was there any Discourse between your Ladyship and my Lord *Grey*, about a Letter, at any other Time?

*Lady Berkley.* Yes, at the *Charter-House*, at my Lord's own House: He shew'd me there, a Letter of the passionate Love he had for her, with some good Counsel in it.

*Mr. Williams.* Did your Ladyship approve of the Counsel he gave her?

*Lady Berkley.* I could never like the passionate Expressions in it: There might be something in it, well said enough, but with the greatest Expressions of Passion and Love: Insomuch that he himself said of it, Madam, I am asham'd of that Part, and would have had me overlook'd it.

*Mr. Williams.* Did your Ladyship say, her Father could not give her better Advice?

*Lady Berkley.* Surely I did not; for I could not but think he could give her a great deal better Advice.

*Mr. Williams.* Does your Ladyship remember a Letter you receiv'd from an unknown Hand?

*Lady Berkley.* Yes, I do, and my Lord Grey came to me, and seem'd to be very careful of my Concerns; Madam, said he, pray take Care, for I saw a Letter directed to your Ladyship, without the Mark of the Post upon it; and I give you this Caution about it, before it comes to you. When I took up the Letter, I thought I saw something very odd and unusual in his Carriage, as if he were in great Disorder, as I was. I went to my Chamber, thither he follow'd me, and would see the Letter, because, he said, it had put me in some Disorder; I told him he should not see it then: The Letter intimated I must look after my Daughter, or I should lose her. At last I was persuaded to let him see the Letter. Madam, says he, is this all that disorders you? I am used to have many such Letters by the Penny-Post; this is nothing but to amuse you. It is a very silly Letter, writ by some Woman, as you may see by the spelling. This was the *Friday* before she left me. And the next Morning, he said 'twas a foolish Letter, what should I trouble my self about it for?

*Mr. Williams.* Did he caution you to lock her up?

*Lady Berkley.* Not that I remember; but he said to me, Madam, whatever you do, do not make her Desperate.

*Mr. Williams.* Pray, my Lady Lucy, do you remember that ever my Lord Grey advised the locking her up?

*Lady Lucy.* Upon my Mother's Discourse concerning the unknown Letter, he might say, that if she fear'd it, she might lock her up; but he never did say, that he did think she would go.

*Mr. Williams.* What did my Lord Grey promise to you?

*Lady Lucy.* He said he would not stir from *Up-Park* till he heard from my Father, and that he would send us all the Letters that came to him from her; and if any came to our Hands, we were to open them.

*Mr. Williams.*



Mr. *Williams*. Was there any Letter sent to your Ladyship from my Lord *Grey*?

*Lady Lucy*. Yes, There was a Letter, and one in it from my Lady *Harriett*.

Mr. *Williams*. Will you please to cast your Eye upon that Letter, and see if that Paper be a true Copy of the Letter you had?

*L. C. J.* What Paper is that you offer Mr. *Williams*?

Mr. *Williams*. It is a Letter from the young Lady to my Lord *Grey*.

*L. C. J.* You know no Use can be made of that Paper; it is contended that my Lord had the Lady in his Power, and then would not she write any Thing?

*L. C. J.* To my Lady *Arabella*. Pray, Madam, after this ill Business, did my Lady *Berkley* use her unkindly?

*Lady Arabella*. No, my Lord: No Mother con'd be more Indulgent and Kind. She did indeed find it necessary to have a stricter Eye over her, and did put a Woman about her, to look after her; and did not permit her to write any Letters: But she had, or express'd, a greater Kindness for her, than any of us all.

*Serj. Jefferies*. My Lady *Lucy*, and my Lady *Arabella*. What Person did you fear should take her away?

*Answer*. We were not afraid of any Body but my Lord *Grey*.

Mr. *Williams*. My Lord, we desire the young Lady may be Sworn.

Mr. *Att. Gen.* We oppose it, Sir.

*L. C. J.* Why should she not be Sworn, Mr. *Attorney*?

Mr. *Just, Dolbin*. If the Lady have the Confidence to be Sworn, I see no Reason why she should not.

Mr. *Att. Gen.* She is highly Criminal in this Matter her Self, in consenting to go away in such a Manner, and to such an evil Purpose; and now she comes to excuse one, that is not only a Partaker in her Fault, but the first Seducer; sure she can-

Letters from the Lady *Harriett*, not suffer'd to be read, because she was in my Lord *Grey*'s Power,

not be a Witness for them, she should be a Witness to excuse her Self.

*Lady Harriett.* permitted to be a Witness, she being no Party to the Information.

*L. C. J.* I think, notwithstanding what you say, she may be a Witness, being no Party to the Information; but I think there is very little Credit to be given to what she says.

*She was Sworn.*

*Mr. Williams.* Madam, We desire your Ladyship to answer, Whether my Lord Grey had any Hand in your Escape?

*Lady Harr.* No.

*Just. Dolbin.* You are upon your Oath, Madam, Have a Care what you say, Consider with your self.

She contradicts the Evidence that had been given concerning her.

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*Lady Harr.* I know I am upon my Oath, and I do, upon my Oath, say I had no Advice from him, nor any body about him, nor did he know any thing of it: It was all my own Design.

*Serj. Jefferies.* Pray did you see my Lord Grey on the Sunday after you went away from your Father's House?

*Lady Harr.* No, I did not: Nor on the Monday, Tuesday, or Wednesday following; it was a great while after; the first Time I saw him after was in a Hackney-Coach at a Coffee-House in Covent-Garden.

*Mr. Williams.* Did you write any Letter to my Lord Grey?

*Lady Harr.* Yes, By the next Post after I came away, that was Tuesday, and had a very harsh Answer; I writ him another Letter, but receiv'd no Answer at all.

*Mr. Thompson.* Did my Lord Grey at any Time perswade you to return to your Father's.

*Lady Harr.* Yes, he did, several Times.

*Serj. Jefferies.* Did not Charnock carry you away from Durdant's, nor did not his Wife assist you in it?

*Lady Harr.* No.

*Serj. Jefferies.* Nor was not she with you on the Sunday Morning?

*Lady Harr.* No, nor was not with me.

*Mr. At. Gen.* Were you not at Mrs. Hilton's, Madam?

*Lady*

*Lady Harr.* No, nor at *Patten's*, or *Jones's*, upon my Oath.

*Mr. At. Gen.* Pray who did come with you from *Durdant's*?

*Lady Harr.* I shall not give any Account of that; for I will not betray any body for their Kindness to me.

*Mr. Justice Dolbin.* If they ask you of any body in the Information, you must tell if it were any of them, but you are not bound to tell if it were any one else.

*Lady Harr.* No, it was none of them. I went away upon another Account.

*L. C. J.* If you have no further Questions to ask her, pray, Madam, sit down again.

*Lady Harr.* Will you not give me Leave to tell the Reason why I left my Father's House.

*Mr. Just. Dolbin.* If they will ask you it they may.

*Mr. Williams.* No, my Lord, we do not think fit to ask her any such Question: She acquits us, and that is enough.

*Lady Harr.* But I desire to tell it my self.

*L. C. J.* I see no Reason to permit it, except we saw you a more indifferent Person to give Evidence, than we find you.

*Lady Harr.* I have been very much reflected upon here to Day, and my Reputation suffers much by the Censure of the World, and therefore—

*L. C. J.* You have injur'd your own Reputation, and prostrated both your Body and your Honour, and are not to be believ'd.

*Mr. Just. Jones.* You are, Madam, to answer only such Questions as are ask'd you, pertinent to the Issue that the Jury are to try; and if the Counsel will ask you no Questions, you are not to tell any Story of your self.

*Mr. Ireton.* My Lord, as to the Evidence of *Patten*, the Case is otherwise than they would represent it to be, about *Charnock's* going thither for Lodgings; for *Mrs. Patten* is a Midwife, and used to lay *Mrs. Charnock*, and it was for

Her Oath did not oblige her to confess who carried her away, if it were none of the Defendants.

She is not permitted to speak in her own Vindication.

She is Censur'd by the Court.

A Witness is only to answer such Questions as are pertinent to the Issue.

her to lye in at *Patten's* House, because it would be inconvenient at my Lord *Grey's*.

*Mrs. Patten* was Sworn.

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*Mrs. Patten's*  
Evidence.

*Mr. Ireton*. Was there any body at your House in *June* or *July* to bespeak Lodgings?

*Mrs. Patten*. *Mr. Charnock* and his Wife came to our House last Summer for Lodgings: She said they were for her self to lye in there.

*L. C. J.* But there came one to your House from *Mrs. Hilton's*, Who was that?

*Mrs. Patten*. I don't know, I was not at Home then, nor did not come home before they went away.

*Wallop* pre-  
tends to di-  
rect the Chief  
Justice in sum-  
ming up the  
Evidence.

*Mr. Wallop*. We hope in your Lordship's Observations, upon the Evidence to the Jury, you will please to take Notice, That there is no Colour of Evidence of any actual Force upon the Lady which is laid in the Information; That my Lord did *Vi & Armis abducere*, &c.

*L. C. J.* Oh, *Mr. Wallop*! Fear not, I shall observe right to the Jury.

The Chief Ju-  
stice's Direc-  
tions to the  
Jury.

Gentlemen of the Jury; The Question before you is, Whether there was any such unlawful Solicitation of this Lady's Love as is laid in the Information, and whether there was any Inveiglement of her to withdraw her self and run away from her Father's House without his Consent; and whether my Lord *Grey* did at any Time frequent her Company afterwards: The Evidence that has been given you is very plain, (if you believe those Witnesses that speak it from my Lord's own Mouth,) That he hath along Time unlawfully solicited her to Lust; for there is nothing else in it, Gentlemen, that is the plain English of it all, he has entic'd her to unlawful Lust: And the next Question is, Whether my Lord had any Hand in Carrying her away; and as to that, it is pretty manifest that his Coachman *Charnock* did carry her away, who was in his Company that Night, and pretended to go to *Up-park* with him, but was in *London* next Morning by Nine a Clock; there is full Evidence of the Guilt of *Charnock* and his Wife, who was the Solicitors about the Business, and took Lodgings for

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for her; *Jones* and his Wife are as guilty as any of the rest, for their Contrivance to keep her secret, especially after he had promis'd *Fitz Gerard* to let him see her: And whether my Lord be not as guilty as *Charnock*, or any of the rest, nay indeed the main Mover of this ill thing, you are to consider; if you do believe the Evidence produc'd for the King, most certainly they are all Five guilty of the Charge in the Information.

*Mr. Just. Dolbin.* There is no Evidence against *Rebecca Jones*.

*Mr. Serj. Jefferies.* No, We cannot insist upon it that there is, you must find her not Guilty.

*Mr. Just. Jones.* I must remember you of one thing, Gentlemen, and that is what dropp'd from my Lord Grey's own Mouth, that when my Lord, as he says, gave his Advice she should be look'd after carefully, he would not give his Reason for it then; but he after did, as he says, tell it my Lady *Lucy*, that she complain'd to him at *St. Jones's* that she led the Life of a Dog or a Slave, and she would not endure it any longer, and desir'd him to assist her or she would do her self a Mischief. Why was not this told before?

*L. C. J.* Ay! but, Brother, my Lady *Berkley* denies it all too.

Then the Jury began to withdraw.

*Earl of Berkley.* My Lord Chief Justice, I desire I may have my Daughter deliver'd to me again.

*Lord Berkley* demands his Daughter.

*L. C. J.* My Lord *Berkley* must have his Daughter again.

*Lady Harr.* I will not go to my Father again.

She refuses to go with him. She is examined by the Court if she is under Restraint.

*Mr. Just. Dolbin.* My Lord, she being now in the Court, and there being a *Homine Replegiando* against my Lord Grey for her, upon which he was committed, we must now examine her. Are you under any Custody or Restraint, Madam.

*Lady Harr.* No, my Lord, I am not.

*L. C. J.* Then we cannot deny my Lord *Berkley* the Custody of his Daughter.

*Lady Harr.* My Lord, I am married.

She affirms she is married to *Mr. Turner*.

*L. C. J.* To whom?

*Lady Harr.* To *Mr. Turner*.

*L. C. J.*

*L. C. J.* What *Turner*? Where is he?

*Lady Harr.* He is here in Court.

*L. C. J.* Are you married to this Lady?

*Mr. Turner.* Yes, I am so, my Lord.

*L. C. J.* Where do you live?

*Mr. Turner.* Sometimes in Town, sometimes in the Country.

*Mr. Just. Dolbin.* He is, I believe, the Son of Sir *William Turner*, who was the Advocate; he is a little like him.

*Serj. Jefferies.* Ay, we all know *Mr. Turner*, and to satisfy you this is all a Part of the same Design, and one of the foulest Practises that ever was used, we shall prove that he was married to another Person before, that is now alive, and has Children by her.

*Mr. Turner.* Ay, do, Sir *George*, if you can; for there was never any such thing.

He is Charg'd  
with having  
another Wife.

*Serj. Jefferies.* Pray, Sir, did not you live at *Bromley* with a Woman as Man and Wife, and had divers Children? and living so intimately, Were you not question'd for it, and you and she own'd your selves to be Man and Wife.

*Mr. Turner.* My Lord, there is no such thing, but this is my Wife I do acknowledge.

*Mr. At. Gen.* We pray, my Lord, that he may have his Oath.

*Mr. Turner.* My Lord, here are the Witnesses ready to prove it that were by.

The Court of  
King's Bench  
can't deter-  
mine it by  
Witnesses.

*Earl of Berkley.* Truly, as to that, to examine this Matter by Witnesses, I conceive this Court, though it be a great Court, yet has not the Cognizance of Marriages: And though there be a Pretence of a Marriage, yet I know you will not determine it, how ready soever he be to make it out by Witnesses; but I desire she may be deliver'd up to me her Father, and let him take his Remedy.

*L. C. J.* I see no Reason but my Lord may take his Daughter.

*Earl of Berkley.* I desire the Court will deliver her to me.

Mr.

Mr. *Just. Dolbin*. My Lord, we cannot dispose of another Man's Wife, and they say they are married; We have nothing to do with it.

L. C. J. My Lord *Berkley*, Your Daughter is free for you to take her; as for Mr. *Turner*, if he thinks he has any Right to the Lady, let him take his Course; Are you at Liberty, and under no Restraint.

*Lady Harr*. I will go with my Husband.

*Earl of Berkley*. Hufwife, You shall go with me. Lord Berkley requires her to go with him.

Mr. *Williams*. Now the Lady is here, I suppose my Lord *Grey* must be discharg'd of his Imprisonment.

*Serj. Jefferies*. No, my Lord, We pray he may be continued in Custody.

L. C. J. How can we do that, Brother, the Commitment upon the Writ *de Homine Replegiando* is but till the Body be produced; and here she is, and says she is under no Restraint. Commitment on a Homine Replegiando is but till the Body is brought in.

Mr. *At. Gen*. We would have my Lord *Grey* forth-coming, in Case he should be Convicted, to receive the Judgment of the Court.

L. C. J. You cannot have Judgment this Term, Mr. *Attorney*, for there are not Four Days left, and my Lord *Grey* is to be found sure! No Judgment till next Term can be, because no Four Days left.

Mr. *Just. Dolbin*. You do ill to press us to what cannot be done; we, it may be, went further than ordinary in Committing him, being a Peer, but we did it to get the young Lady at Liberty; Here she now appears, and says she is under no Restraint; What shall we do? She is properly the Plaintiff in the *Homine Replegiando*, and must declare if she please, we cannot detain him in Custody. The Party detain'd is Plaintiff in a Homine Replegiando.

L. C. J. My Lord shall give Security to answer her Suit upon the *Homine Replegiando*: She being produc'd, we are bound by Law to Bail him.

Accordingly he was Bail'd at the Suit of the Lady *Henrietta Berkley*, by Mr. *Forrester* and Mr. *Thomas Wharton*. Page 78. My Lord Grey is Bailed.

*Earl of Berkley*. My Lord, I desire I may have my Daughter again.

L. C. J. My Lord, We do not hinder you; You may take her.

*Lady*

*Lady Harr.* I will go with my Husband.

*Earl of Berkley.* Then all that are my Friends seize her, I Charge you.

*L. C. J.* Let us have no Breaking the Peace in the Court:

A Contention  
between my  
Lord *Berkley*  
and Mr. *Turner*  
for the Lady  
*Harriett*,  
The Chief Ju-  
stice commits  
her to the  
King's-Bench  
with Mr. *Turner*.  
She is Releas'd.

A private Ver-  
dict against  
of the Defen-  
dants.

The Jury a-  
bide by it in  
Court the  
next Morning.

The Verdict  
Recorded.

No Judgment  
pray'd.

A *Nolle prosequi*  
enter'd.

Then the Court broke up, and passing through the Hall there was a great Scuffle about the Lady, and Swords drawn on both Sides; but my Lord Chief Justice coming by, ordered the *Tipstaff* (who had formerly a Warrant to search for her) to take Charge of her and carry her over to the King's-Bench, and Mr. *Turner* asking if he should be Committed too, the Chief Justice told him he might if he would, which he did; and it is reported they lay together that Night in the Marshal's-House, and she was Released out of Prison, by Order of the Court, the last Day of the Term,

The Morning after the Trial, the Jury having (as is usual in all Causes not Capital try'd at the Bar where the Court do not sit long enough to take the Verdict) given in a private Verdict the Evening before at a Judge's Chamber, and being now call'd over, all appear'd, and being ask'd if they did abide by their Verdict that they gave the Night before, answer'd Yes; which was read by the Clerk of the Crown to be, That all the Defendants were Guilty of the Matters charg'd in the Information, except *Rebecca Jones*, who was Not-Guilty; which Verdict being Recorded, was commended by the Court and the King's Counsel: But in the next Vacation, the Matter was Compromised, and so no Judgment was ever Pray'd, or Enter'd upon Record; but Mr. *Attorney General*, before the next *Hillary Term*, enter'd a *Nolle Prosequi* as to all the Defendants.

The



*The Tryal of* THOMAS PILKINGTON, *Esq;*  
 SAMUEL SHUTE, *Esq;* *Sheriffs*; HENRY  
 CORNISH, *Alderman*; FORD Lord  
 GREY of Werk, Sir THOMAS PLAYER,  
*Kt. Chamberlain of London*, SLINGSBY  
 BETHEL, *Esq;* FRANCIS JENKS, JOHN  
 DEAGLE, RICHARD FREEMAN, RICH-  
 ARD GOODENOUGH, ROBERT KEY,  
 JOHN WICKHAM, SAMUEL SWINOCK,  
 JOHN JEKYLL, *Sen. &c.* 8 May, 35  
 Car. II. 1683.

“ THE Information was brought in the Name  
 “ of Sir *Robert Sawyer* the Attorney-Gener-  
 “ ral, and Set forth, That upon the 24th of *June*  
 “ last, in *Guildhall*, there was a Common-Hall  
 “ Summon’d by Sir *John Moore*, *Kt.* then Lord-  
 “ Mayor of the City of *London*, and thereupon  
 “ held for the Election of Sheriffs for the Year  
 “ ensuing the Feast of *St. Michael*. And that on  
 “ the same 24th of *June*, the said Sir *John Moore*  
 “ adjourn’d the Court till the *Tuesday* following  
 “ by Proclamation. That after the said Adjourn-  
 “ ment, the Lord-Mayor caused Proclamation to  
 “ be made for all Persons to depart: And, That  
 “ the Defendants, intending to disturb the Peace  
 “ of the King after the Adjournment aforesaid,  
 “ did unlawfully, with many other Persons un-  
 “ known, continue together, and did Riotously  
 “ Assault the Lord Mayor: And, after the said  
 “ Adjournment by Proclamation, two of the De-  
 “ fendant, *Pilkington* and *Shute*, by Colour of  
 “ their Office as Sheriffs of this City, and the rest  
 “ of the Defendants, did continue the Poll, and  
 “ unlawfully affirm to the People, that Sir *John*  
 “ *Moore*, the Lord-Mayor, had no Power to ad-  
 “ journ them: And that they continu’d this great  
 “ Tumult two Hours, to the Terrour of the  
 “ King’s Subjects, and the evil Example of others,  
 “ and

“ and against the Peace of our Sovereign Lord  
“ the King, &c.

*Tuesday the 8th of May, 1683.*

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The Court being sat, and the usual Proclamation made, the Jury appear'd.

Mr. *Somers*. My Lord, I am to challenge the Array.

Mr. *Thomson*. My Lord, I desire this Challenge may be read.

The Challenge read in *French*.

Mr. *Thomson*. We desire this Challenge may be allow'd.

Sir Edmund  
Saunders.

Whether it be  
sufficient  
Cause of  
Challenge to  
the Array,  
That the Le-  
gality of the  
Sheriff's Ele-  
ction is in Di-  
spute.

Lord Chief Justice. There is no Colour for it: I thought you would have said the Sheriffs had been a Kin to the King, but you have made it worse: You come with a long Tale of the Merits of the Cause, and by this you would have the Challenge to be allow'd: If the Sheriffs do hold of the King a Fee-Farm, or have a Pension or Annuity from the King, the Book doth say that in some Cases, It is a Challenge; but here you recite a long Process concerning a Difference between the Mayor and Sheriffs, and if all this were true, It is no Challenge at all.

Mr. *Thomson*. If the Adjournment by my Lord-Mayor was not according to Law, Mr. Sheriff *North* never was Sheriff of *London*; so that Mr. *North's* Title comes in Question here, Whether he be a legal Sheriff, and it will appear the Election of Mr. *North* is interested in this Matter. This is a common Case in our Books, that if a Sheriff be concern'd in Point of Title, it is a principal Challenge, he is no Person by Law to Return a Jury, but the Coroner.

L. C. J. If the King had made the *Venire* to the Coroner, had not the Cause been found against the King, before one Word had been said for him by your own Opening.

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Mr. *Thomson*. My Lord, We desire we may have the Advantage of a Bill of Exceptions.

L. C. J. I see nothing in it for a Bill of Exceptions.

The

The Jury Sworn.

|                       |   |                    |
|-----------------------|---|--------------------|
| Sir Benjamin Newland, | } | Henry Wagstaff,    |
| Sir John Matthews,    |   | Barthol. Ferriman, |
| Sir John Buckworth,   |   | Thomas Blackmore,  |
| Sir Tho. Griffith,    |   | Samuel Newton,     |
| Sir Edmund Wiseman,   |   | William Watton,    |
| Percival Gilburn,     |   | George Villars,    |

Mr. Lightfoot appears.

*Att. Gen.* Pray give an Account to the Jury, of the manner of Election and Chusing of a Common-Hall.

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Sir Robert Sawyer.

*Lightfoot.* I have been almost Twenty-five Years an Attorney; I always took it, that the Serjant of the Chamber had Order from my Lord Mayor, to go down to the Clerks or Beadles of the Companies, to summon a Common-Hall by such a Day: The Sheriffs never summon'd any. As soon as my Lord Mayor came, the *Common Cryer* made Proclamation, *You good Men, summon'd such a Day, &c. Give your Attendance.* The *Common-Cryer* was my Lord Mayor's Officer.) When the Business is done, Mr. *Town Clerk* takes his Direction from my Lord Mayor, and bids the Officer make Proclamation to depart, which they did, till within these two or three Years. The Sheriffs never dissolv'd them.

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Mr. *Williams.* Did you ever know the Lord Mayor adjourn the Common-Hall to a certain Day?

*Lightfoot.* I never did.

Sir *Fr. Winnington.* Did you ever know the Lord Mayor, before the Election was over, adjourn it against the Will of the Sheriffs?

*Lightfoot.* No.

Mr. *Thomson.* Did you ever know the Sheriffs adjourn the Common-Hall, without acquainting my Lord Mayor?

*Lightfoot.* No.

Sir *Fr. Win.* When there was any Contest about the Election, who manag'd it?

*Lightfoot.* When the Court was proclaim'd, and the Recorder had spoken to them, my Lord Mayor and

and the Aldermen withdrew from the Hustings; and the Sheriffs, and other Officers, stood there with them. Then the Commons proposed who they would have put in Nomination, and they were put up. Then the Sheriffs turn'd back to the Gentlemen upon the Hustings, to ask their Opinions concerning the Hands: And then it hath been declared by the *Common Cryer*, or *Common Serjant*.

*Mr. Common Serjant* appears.

*Serj. Jefferies*. Pray, will you tell my Lord, what you have observ'd?

*Com. Serj.* When the *Common Cryer* hath made Proclamation, the Lord Mayor and Court of Aldermen being set upon the Hustings, *Mr. Recorder* makes a Speech, and then my Lord Mayor and Aldermen retire into this Court, leaving the Sheriffs, and me, and the rest of the Officers, upon the Hustings. I there manage the Election, and when the Election is made, I go up to the Court of Aldermen, and make Report of what hath been done in the Hall; and then my Lord Mayor, and the Aldermen, and the Recorder, come down again, and I declare the Election as my Lord Mayor's Officer.

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*Att. Gen.* Did ever any Sheriff undertake to controul the Mayor in the Business of putting Questions, or taking Votes?

*Com. Serj.* There was never any Dispute, till *Mr. Sheriff Bethel* was upon the Hustings, and then there was. The first Dispute about Sheriffs, since I was *Common Serjant*, was about *Mr. Jenks*, and that Poll was taken by the Direction of my Lord Mayor, by the *Town Clerk* and my Self: And our Books say, if there be a Dispute in the Common-Hall, it must be decided as, in the Common-Council. It is in *Liber albus*.

*Mr. Peter King* appears.

*Serj. Jefferies*. Pray give my Lord an Account what you know of this Matter?

*Mr. King*. I have been at a Court of Common-Hall Twenty-eight Years: I never look'd upon the Sheriffs to have any Concern there. And I remember



ber in Ancient Times, they took Advice of the Officers by, and they never did esteem themselves, in those Days, to be any more concern'd, than as the best Officers.

Mr. Jones. Did the Sheriffs ever continue the Assembly after it was dissolv'd?

Mr. King. No.

Mr. Holt. Who declares the Poll in the Hall?

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Mr. King. The *Common Serjant*.

Com. Serj. When Persons are put in Nomination, and the Hands are held up, I generally ask the People about me, who have most, and particularly the Sheriffs, and so make Declaration.

Mr. *Common Cryer* appears.

Serj. Jefferies. When the Common Hall is met, give an Account what Proclamation is made.

Com. Cryer. I have been in this Place almost Seventeen Years: I always come with the Lord Mayor, and make Proclamation by Order of my Lord Mayor, dictated by the Town Clerk, in these Words. "You good Men of the Livery, summoned to appear here this Day, for the Confirmation of such a one, chosen by my Lord Mayor, and another fit and able Person, to be Sheriffs of the City of London and County of Middlesex, for the Year ensuing, draw near, and give your Attendance." I never adjourn'd the Court in my Life, but by Order from my Lord Mayor: Nor ever dissolv'd the Court, but by his Order.

Serj. Jefferies. When the Sheriffs have Fin'd off, who gives Direction for a Common Hall?

Com. Cryer. My Lord Mayor.

Att. Gen. Do the Sheriffs put any Vote?

Com. Cryer. Never, Sir. I never put any Vote, but what I have from the *Common Serjant*.

Sir Fr. Win. Did you ever know my Lord Mayor adjourn the Court, before the Election was over?

Com. Cryer. Sir Robert Clayton did.

Serj. Jefferies. Till the Time of Bethel, in Sir Robert Clayton's Mayoralty, there was never such a Thing as a Poll for Sheriffs.

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Sir *William Hooker* appears.

*Att. Gen.* You have been Sheriff and Lord Mayor of *London*: I would know, whether you look'd upon it as your Right, when you were Sheriff?

Sir *W. Hooker*. No, Nor ever durst presume to think it: In those Days it was not thought upon.

*Att. Gen.* When you were Lord Mayor, did you order Summons for Common Hall?

Sir *W. Hooker*. Always, Nor ever Consulted the Sheriffs about it.

Mr. *Thomson*. Did you ever Adjourn the Court, before the Business was done?

Sir *W. Hooker*. I never saw any such Occasion; Rebellion was not Ripe then. I confess, once I was for'd, in this Place, to cause the Sword to be taken up, and go out, and the Court was dissolved, and durst not go on after I was gone.

*Att. Gen.* In 48. The Sheriffs usurp'd this Power, and had an Act to confirm it.

Mr. *Sword-bearer* appear'd.

Serj. *Jefferies*. In all your Time, who order'd Common Halls?

*Sword-bearer*. I have been in this Office Twenty three Years; my Lord Mayor always gave Direction for summoning Common Halls; I never knew the Sheriffs interpose. And when the *Common Serjeant* comes up, and Reports what is done, my Lord Mayor and Aldermen go down to the Hustings, and it is declared by the Recorder or *Common Serjeant*, by the Order of the Lord Mayor—— I think my Lord Mayor went down once, to give them Satisfaction upon a Dispute.

Sir *Fr. Win.* During the Election, did you ever hear them adjourn'd before it was over?

*Sword-bearer*. No, Sir, Nor ever heard any Occasion for it.

Mr. *Thomson*. My Lord, they have laid in the Information, That the Sheriffs are duly Elected, for one Year next following, from the Eve of *St. Michael*: Now that is not so in Fact, for the Election is for a Year, to commence on *Michaelmas* Day: We make this Objection, and put you to prove it.

Serj. *Jefferies*. It is not a Time now to prove that.

Mr. *Ban-*

Mr. *Bancroft* appears.

*Council*. Did you ever know the Sheriffs give Order for dissolving the Hall?

*Bancroft*. No.

*Sir Fr. Win*. During the Time of the Election, does the Lord Mayor ever meddle?

*Bancroft*. My Lord Mayor withdraws, and then the Sheriffs, the *Common Serjant*, and the *Common Cryer*, manage the Election; and when the Election is made, the Sheriffs, the *Common Serjant*, and *Common Cryer*, come up and acquaint my Lord; and he goes down and confirms the Election, and then dissolves the Court,

*Serj. Jefferies*. Who makes a Judgment of the Election; the *Common Serjant* or the Sheriffs?

*Bancroft*. The Sheriffs give their Opinion in it.

*Serj. Jefferies*. Mr. *Com. Cryer*, Were you present on *Midsummer-Day*, when this Matter happen'd?

*Com. Cryer*. I was there at the beginning of the Election: I made Proclamation, and afterwards there was a Poll demanded, and the Poll was begun. About Five or Six a Clock, my Lord Mayor came down upon the Hustings, and I adjourn'd the Court till another Day, and there was a Hubbub; and I went home with my Lord Mayor.

Mr. *Weston* appear'd.

*Serj. Jefferies*. Will you tell the Court, how my Lord Mayor was us'd, when he came out of the Hall?

*Weston*. My Lord Mayor sent me to the Sheriffs twice, to come up to the Council Chamber: One told me he was upon the King's Business, and the other said he would not come. About half an Hour after, Sheriff *Pilkington* came up; and then we went down to the Court of Hustings, and the *Com. Cryer*, by my Lord Mayor's Order, adjourn'd the Court from *Saturday* till *Tuesday* following, and said *God save the King*, and a great part of the Hall his'd. And as my Lord Mayor was coming out of the Hall, I was afraid my Lord Mayor would have had a Mischiefe, but that there was so many honest Gentlemen about him. When we came into the Poreh Yard, I saw my Lord Mayor's Hat off;

off; and as I went to catch his Hat, I caught one of his Officers, who held up his Train, by the Head. He was either knock'd down, or fell down. The Sword was at a great distance; and when my Lord came out into the Yard, Gentlemen, says he, I desire you would go home to your Lodgings, and commanded them in the King's Name to depart. And upon my Lord's Command, I went back to the Sheriffs, and let them know my Lord had adjourn'd the Court till *Tuesday*.

*Mr. Thomson.* Do you know that any of the Defendants did throw off my Lord's Hat?

*Mr. Weston.* I can't say that: But as my Lord's Friends press'd back to preserve my Lord, they press'd the more forward; and I commanded them in the King's Name to forbear, and struck at some of them with my Cane.

*L. C. J.* He did well: Do you think a Magistrate is to be crouded and press'd upon?

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*Com. Serjant.* I heard them cry out, *No God bless the King, Down with the Sword, No Lord Mayor.* I laid hold of one of them, but the Rabble got him from me.

*Mr. Williams.* Can you name any one that said so?

*Com. Serjant.* I cannot.

*Serj. Jefferies.* This justifies my Lord Mayor, for endeavouring to disperse the Rabble.

*Mr. Craddock* appears.

*Mr. Craddock.* I was standing at the Place where they Poll'd, and my Lord Mayor was coming towards it, to protest against their manner of proceeding; and Sheriff *Bethel* came to me, and said, *Resist him*, I think he hath nothing to do here.

*Serj. Jefferies.* Did you see *Mr. Jenks* or *Mr. Deagle* there?

*Mr. Craddock.* I saw *Mr. Jenks*, as my Lord Mayor came down, but not after, I did not see *Deagle*.

*Mr. Williams.* Did *Mr. Bethel* bid you Oppose or Resist my Lord Mayor, before the Poll was adjourn'd, or after?

*Craddock.* Sir, It was before.

*Mr. Reeves*



Mr. Reeves appear'd.

I came to the Polling Place about Four or Five a Clock, and saw the Sword up; I suppose my Lord Mayor was there, and came to stop their Proceedings in Polling, and there was a great Contest among them. One cry'd he had nothing to do there: Another said, stop the Sword; and I laid hold on him, but they got him away. After my Lord Mayor was gone, *Shute* and *Pilkington* encourag'd the People to Poll, and continued at the Polling Places a great while after.

Sir *Fr. Win.* We agree in Fact it was so.

Mr. *Hill* confirm'd the foregoing Evidence; and depos'd farther, that he saw there Mr. *Rob. Key*, Mr. *Goodenough*, and my Lord *Grey*, among the People, and Alderman *Cornish*: But that he only saw my Lord *Grey* go through the Hall.

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Mr. *Fletcher* appear'd.

*Fletcher.* On the 24th of June I was there, by Order of Sheriff *Shute*, after my Lord Mayor had adjourn'd the Court; and it was to call all Men that were to Poll, to come forwards, for the Books were to be shut. Mr. *Pilkington*, and Mr. *Shute*, were both there.

Captain *Clark* was call'd.

*Capt. Clark.* I came down into the Hall, and did hear a Whispering; Whereupon I went to guard my Lord Mayor. He came down upon the Hustings, and Proclamation was made for the Adjournment of the Court; and when *God save the King* was said, I believe an Hundred, and more, hiss'd; and they cry'd out, *No King's Man, No Sword's Man*. I laid hold of one of them; and One or Two said, *for God sake Guard my Lord! He is in Danger*. And my Lord was down upon his Knee; I can't tell how he came down, but *Press on, Press on*, was the Cry, and *God save the Sheriffs*. I waited on my Lord Mayor home, and about an Hour or two after came down to the Hall, and found the People shouting *God save the Sheriffs*. I saw the Sheriffs *Pilkington* and *Shute*, carrying on the Poll; and about Eight or Nine a Clock I went home.

Major Kelsey was call'd.

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*Maj. Kelsey.* When my Lord came out of Court, I went after; and some cry'd *Stop him, Stop him;* I got between them and some of my Lord's Friends, and kept them off; but when we came just to the going out, they gave a Shout, and I saw my Lord Mayor's Hat upon his Back; and I can't tell whether he touch'd the Ground with his Hand, but I was almost down, and said, *Gentlemen, Do you intend to Murder my Lord Mayor?*

Mr. Hammon call'd.

*Mr. Hammond.* About Nine a Clock at Night, I stood at the Door that leads to the *Common Pleas*, and there came in Alderman *Cornish*, and *Goodenough*, and *Old Key*; and by and by, Mr. Sheriff *Shute* came out, and he went upon the Hustings, and there he made Proclamation to adjourn the Court, himself, because several had refused; and *Sir William Gulstone*, *Mr. Goodenough*, and my Lord *Grey*, were there mighty busy. This was about two Hours after my Lord Mayor adjourn'd the Court.

*Lord Grey.* It was after the Poll was clos'd, I was there.

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Mr. Higgins call'd.

*Mr. Higgins.* My Lord, I heard them say, *Down with the Sword.* And when I had seen my Lord Mayor safe home, I came back; and I saw Alderman *Cornish* come up towards the Sheriffs: *Gentlemen*, said he, *you are doing Right.* I saw Mr. *Shute*, and Mr. *Jekyl* there: Mr. *Jekyl* seconded Mr. *Cornish*, when he said, *Insist upon your Rights.*

Mr. *Bell.* I saw Mr. *Cornish*, and Sheriff *Pilkington* deliver two Poll Books into my Hands.

Mr. *Kavanaugh.* I saw *Cornish* and Sheriff *Shute*; Mr. *Shute* order'd Proclamation to be made, and told them, *Whereas my Lord Mayor had taken upon him to Adjourn till Nine a Clock, we the Sheriffs of London and Middlesex, being the proper Officers, do Adjourn it to Tuesday at Nine of the Clock.*

Mr. *Denham.* I saw *Sir Tho. Player*, and Mr. *Jenks*, in the Yard,

Mr. *Fare*

Mr. Farrington call'd.

*Farrington.* I saw there Sheriff *Pilkington*, *Shute*, Sir *Tho. Player*, Mr. *Wickham*, Mr. *Jenks*, *Babington*, Alderman *Cornish*, and one *Jennings*; I went where they were taking the Poll, said I my Lord Mayor has adjourn'd the Court, What do you do here? Says Mr. *Wickham*, my Lord Mayor has nothing to do here, neither will we be Rul'd by any of your Tory Lord Mayors, and they fell about me, and, I believe, if it had not been for Mr. *Fletcher* and Mr. *Hill*, they had done me a Mischief, for they trod upon my Toes.

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Mr. *Cartwright*. All I can say is, That as soon as my Lord Mayor adjourn'd the Court upon the Hustings, he came down, and going out of the Hall he had like to have been thrown down, had it not been for Mr. *Shaw*; and going to save my Lord Mayor I wrench'd my Back, and spit Blood for Seven Days after, and I have not been my own Man ever since.

Mr. *Shaw* call'd.

Mr. *Shaw*. My Lord Mayor sent to the Sheriffs and ordered them to forbear Polling and come up to the Chamber; he sent two or three Times, but they deny'd coming to him and went on, and my Lord ordered the *Common Cryer* to make Proclamation for them to depart, and if they staid he would look upon them as Rioters, there was a Hissing and a great Crowd, and there was Sir *James Edwards* in the Court, they hunch'd him with their Elbows; and as his Lordship was going down the Steps, there was such a Crowd, that if I had not catch'd him, in my Arms, he had fallen upon his Forehead, and his Hat was off.

Mr. *Kemp* call'd.

Mr. *Kemp*. Mr. *Deagle* confess'd he was amongst them about Seven at Night with Alderman *Cornish*.

Mr. *Rigby* call'd.

Mr. *Rigby*. I saw him in the Crowd about Seven at Night.

*Serj. Jefferies*. We have now prov'd it against them all.

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The Rioters  
Defence.

Mr. *Hammon*. They hollow'd us Home, Sir, as far as *Fishmongers-Hall*.

Mr. *Williams*. Gentlemen, I am of Counsel for the Defendants, and the Question is, Whether these Persons taken for Defendants, are guilty of this Riot. My Lord, in the first Place, for the Cries. What the Cry was, hath been too often mentioned, but there is nothing at all fixed upon any Person that is Defendant, All that is Charg'd upon us, is, That we were in the Hall it seems, and because there was this Noise heard, therefore we must be Guilty. They say in the Information, that the Lord Mayor call'd a Common Hall: We agree that, and that the Lord Mayor is the King's Lieutenant; but to infer from thence, that therefore he must execute all Offices in the City, is absurd. The Question between us, is this, Whether the Sheriffs, in this Case, did more than their Office, as Sheriffs of the City of *London*? This Question, Whether the Lord Mayor may adjourn the Common Hall to a certain Day, is a Question of Right? Whether he can do it, or the Sheriffs? And I don't see what Consequence it can have upon the Government. Here is the single Question, Whether the Sheriffs were guilty of a Riot, in continuing this Poll? And it is not prov'd, that ever the Lord Mayor, before this Time, did ever attempt to adjourn a Common Hall, to any certain Time.

Whoever can  
Call or Dissolve an Assembly, may  
Adjourn it.  
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L. C. J. What need; if there had been no Precedent. If a Man may Call and Dissolve an Assembly, do you think, by the Law it self, he may not Adjourn it to a convenient Hour? Do not Judges of Assize, in all the Counties of *England*, do it? And yet find me the Statute or Commission, that gives them Leave to adjourn from Time to Time?

Mr. *Williams*. If there were a Question of Right, admitting my Lord Mayor was in the Right, and the Sheriffs in the Wrong, in continuing the Poll, and going on with the execution of their Office, as they apprehended, I hope your Lordship will not make this a Riot. If they were guilty of the Noise that was made, I am silent; but if they only continu'd the Poll, it will be hard to make them guilty of a Riot. It is impossible, at such Elections, but there



there will be Reviling, ill Language given; but I say this, that they have not instanc'd, in any one Defendant, that he was guilty of any one particular Act, that amounted to a Riot in it self.

Sir Fr. Win. My Lord, as to those Villanous Words that were spoken, they ought to be inquir'd into; but there is no Evidence to put them upon any of the Defendants. Now that being pared off, that the meeting together was lawful, that is agreed; and if so, it will be a very hard Matter to make a Riot of it. In such a Concourse of People as was met there, it is as slender a Proof of a Riot, as ever was: And thus the Citizens of London, that happen not to be the greater Number, when they lose the Election, may be found guilty of a Riot, in choosing other Officers, as well as Sheriffs. We will call Ancient Citizens, to prove that the Sheriffs always had the Management; that my Lord Mayor never concern'd himself, till he had Notice it was determin'd; and if that have been the Practice, I don't see how they will make this a Riot. We will call our Witnesses.

Sir Robert Clayton.

Sir Robert Clayton. In the Year of my Mayoralty, according to Custom, I summon'd a Common Hall; and there was a Person presented, I had drunk too: The Hall did refuse him, and there was a great Noise and Hubbub about it. We found out a way to accommodate that Matter, and left them to chuse two Sheriffs for themselves. I retir'd into this Court, with my Brethren, and Mr. Recorder. We sent for the Sheriffs, to examine the Matter: They told us they could not agree to the Thing; there were four Persons in Nomination, and they had granted a Poll. After this, we went down into the Common Hall, and would have Adjourn'd the Court to a longer Time, but the People cry'd out to go to the Poll presently. I signified to them, I was to go to the Tryal of one *Giles*, for Assassinating *Arnold*; and attempted to go out of the Hall several Times, but was forc'd to retire back to the Hustings two or three times. I would have left the Sheriffs to manage the Poll, which I thought was their Duty; I did not apprehend it

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to be my Right then : And I think the Sheriffs did adjourn that Poll. I was not Consulted, to the best of my Knowledge, nor did give any particular Directions for Adjournment.

*Serj. Jefferies.* Sir Robert, Do you remember the Hall was adjourn'd while you was there?

*Sir Rob. Clayton.* I think the Common Hall was adjourn'd; but there was such a Noise, the People could not hear it.

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*Serj. Jefferies.* Then you remember there was an Adjournment : I ask you, whether it was appointed by you or the Sheriffs?

*Sir Rob. Clayton.* Truly, I believe it was appointed by me.

Whether a Witness ought not to speak positively to Facts that have happened lately.

*Att. Gen.* My Lord, you know there is a Rule in *Chancery*, if it be a Matter within Seven Years, if it be not answered positively, it is no Answer. If one asks a Witness a Question, that lies within a little while, if he will not answer either Affirmatively or Negatively, he is no Witness.

*L. C. J.* I can't tell, Mr. Attorney.

*Mr. Jones.* Will you answer, Sir Robert, Whether you commanded the *Common Serjant* to go and adjourn the Hall or no?

*Sir Rob. Clayton.* I don't remember that I did.

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*Mr. Love* appear'd.

Whether a Common Hall are bound to Elect the Person my Lord Mayor drinks to for Sheriff.

*Mr. Love.* About Twenty two Years ago, I did observe the Practice to be this: When I was call'd into this Office of Sheriff, I took it for granted, that it was the Sheriff's Office to manage the Common Hall. I have receiv'd it by Tradition from all before me, and my own Experience. I remember, when we came to chuse Sheriffs on *Midsummer-Day*, my Lord Mayor said to me, and my Brother Sheriff, *Gentlemen, look to your Office*; and we chose two Sheriffs, one who had been drank to by my Lord Mayor; we look'd upon the drinking to him, but a Ceremony; but being a Senior sitting Alderman, we return'd him, otherwise I assure you I would not, notwithstanding the Drinking. My Lord Mayor withdrew, he did not meddle with the Election, but left it to the Sheriffs. I never heard, till these late Times, that my Lord Mayor interposed.

*Att.*

*Att. Gen.* You speak of the time of your Reign, was it before the King came in?

*Mr. Love.* It was that Year the King came in.

*Att. Gen.* Do you remember an Act of Parliament in 48. then in Force, of shutting out my Lord Mayor?

*Serj. Jefferies.* I desire to know whether you remember the City, before the King came in, and whether the Custom of the Lord Mayor's drinking to Sheriffs, was not used before the King came in?

*Mr. Love.* A long Time.

*Mr. Williams.* We will prove, if there was any Thing like a Riot, my Lord Mayor, and those that were with him, were the Authors of it.

*L. C. J.* When Multitudes of People are gathered together upon a lawful Occasion, and a Riot happen, it might be urg'd in mitigation of the Fine; but these Men that commit it, are not wholly excused, for *Ignorantia Juris* is not an Excuse.

*Mr. Holt.* My Lord, there is a great deal of difference, where a Person claims a Right to himself, and does an extravagant Action. If I give out in Speeches, that I have a Right to another Man's Estate, no Action lies against me: But if I do an extravagant Action, and say another Man has a Title, an Action lies against me.

*Mr. Wallop.* In a Point of Right, if they have a probable Cause to insist upon it, although they are mistaken in the Title, it is no Riot.

*Mr. Sibly* appear'd.

*Mr. Sibly.* I have been of the Livery ever since 39. In all my Time, to the best of my Remembrance, it hath been the Custom (except of late) that the Sheriffs of London, have had the Management of the Election; I never knew my Lord Mayor interpose.

*L. C. J.* Pray did my Lord Mayor direct the summoning the Hall?

*Mr. Sibly.* It is more than I know.

*L. C. J.* You bring a Witness that knows nothing of the Matter.

*Sir Fr. Win.* We do admit my Lord Mayor summons the Court.

*Mr. Sibly*

Whether a Number of Persons insisting upon, and asserting their Right, when they have a probable Cause, can be said to be guilty of a Riot in so doing.

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Mr. Sibly. My Lord, I desire to explain my self I believe the Summons was directed from my Lord Mayor.

Mr. Winstanley appear'd.

Mr. Winstanley. Upon that Poll between Mr. Kiffen, and Sir Rob. Clayton, the Sheriffs manag'd the Poll.

Serj. Jefferies. Who declar'd the Election?

Mr. Winstanley. Truly I can't remember.

L. C. J. You call Witnesses that know nothing of the Matter, or nothing to the Purpose.

Mr. Thomson. If my Lord Mayor hath Power to call a Common Hall, he hath not to adjourn it, before the Business is done.

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L. C. J. It is plain he may do it: You know it was agreed on all Sides, that Sir Samuel Starling, the Lord Mayor, had well dissolv'd the Assembly, that is in point of Law, and they could not say the Assembly was in being. Yet afterwards there was an Action brought again him, and they laid it, *That He, maliciously, and to the intent, that he who was chosen Bridgmaster, and duly Elected, should be set aside, dissolv'd the Assembly, and denied to grant a Poll, which they ought to have had*; yet for all that the Assembly was well dissolv'd.

Sir Simon Lewis appear'd, who was Sheriff, when Sir Rob. Clayton was Mayor.

Serj. Jefferies. Pray give an Account, concerning the Adjournment of the Poll, when you went to the Sessions House in the Old Bailey.

Sir Simon Lewis. We came and waited upon my Lord Mayor here, and told him they demanded a Poll without. We took his Directions, and my Lord Mayor did adjourn the Court, because the Assassines of Arnold were to be try'd: It was adjourn'd till Monday, and my Lord Mayor and Aldermen went to the Sessions House; but, indeed, we were left as Prisoners, and I receiv'd a Blow on my Breast.

Sir Jonathan Raymond, the other Sheriff, appear'd.

Att. Gen. Did you pretend to have the Power, then, of adjourning the Court?

Sir Jon. Raymond. My Lord Mayor did adjourn the Court, because of that Tryal; and then afterwards we went upon our Poll. We were several Days



Days upon it: We only appointed from Day to Day, till we had made an end, and then we declar'd it to my Lord Mayor and the Court of Aldermen; and my Lord Mayor, and Court of Aldermen, came upon the Hustings, and declared who it fell upon.

Sir James Smith.

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Serj. Jefferies. Did you pretend to have a Power of adjourning Common Halls?

Sir J. Smith. No, Sir. We were Sheriffs immediately after Sir Rob. Clayton; I never heard it question'd, but my Lord Mayor had the Right of it.

Com. Ser. My Lord, when Sir Rob. Clayton was Mayor, and went to the *Sessions House*, the Hall was adjourn'd to *Monday*, by his Directions. On *Monday*, when we came to Poll again, by his Direction, I went to his House, and he order'd me to go with the Sheriffs to adjourn it. Afterwards there was a Court of Aldermen purposely call'd, and upon their Direction, I took the Poll and kept it; and every Adjournment was made by his particular Direction to me.

Sir Rob. Clayton. Some part of the Story which Mr. Common Serjant does say, I do remember; there were several Adjournments made, I might be particularly consulted.

Mr. Williams. In Defence of my Lord Grey in particular, we say, he had Business here with Sir William Gulstone, about the Sale of a Mannor in *Essex*.

Mr. Ireton call'd.

Mr. Ireton. My Lord, I know at this very Time, my Lord Grey was treating with Sir William Gulstone, about the Mannor of *Corsfield* in *Essex*; and they had appointed to meet that Night at t'other end of the Town, if the Poll were ended. In the Evening I met my Lord Grey, who told me he had been with Sir William Gulstone in *London*, and had dispatch'd the Business.

Sir Thomas Armstrong call'd.

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Sir Thomas Armstrong. I saw my Lord Grey at Sir Thomas Player's, that Day, where'tis, he said, the Business

Business was treated of, about Twelve a Clock, and again at Eight.

Mr. *Wallop*. If Men do lawfully meet together, if by chance they fall together by the Ears, and commit many Misdemeanors, this can never be a Riot: But, say they, here was a Command by my Lord Mayor, to adjourn the Court, and they continue after Adjournment. Now the Question is, Whether he had Power to adjourn it or no? The Citizens did insist upon it, that he had no Power. Now, Gentlemen of the Jury, if you find in your Conscience, that the Citizens had a probable Cause, and they insisted upon it, this can never be a Riot.

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Mr. *Holt*. I shall only Remind your Lordship of Sir *Robert Atkins's* Case, a late Case in the *King's Bench*. There can be no Assembly to chuse an Alderman (as in that Case) unless the Mayor be there. The Assembly was held, and yet, because it was not done in a tumultuous Manner, but with a good Intent, it was held, that Sir *Rob. Atkins* was not Guilty of a Riot. There must be an evil Intention to do some Mischief.

Persons continuing together, to do an unlawful Act, are Rioters, though the Assembly were at first lawfully call'd.

*Att. Gen.* We have done with the Evidence on both Sides; and you do now see the Right of the Lord Mayor, notwithstanding all the Vulgar and Popular Discourses, is asserted: Whoever knows *London*, must know, the Sheriffs of *London* are not Officers of this Corporation as Sheriffs, but they are the King's Officers of the County, granted to be chosen by the Citizens; they are in particular Cases, Judges for choosing Parliament Men, but in no Corporation Act whatever. And as to the Case put by Mr. *Wallop*, where a Man claims a private Right, it is not like this, where Men concern themselves in a Matter of Publick Government. Here the publick Peace of the City is in Danger, and no Pretence of Right, can justify such a Thing. And I do say, the continuing Persons together, to do that, which if they had summon'd them to do, had been unlawful, is as much an unlawful Thing, and a Riot, as that. I would fain know, if the Sheriffs had summon'd all the Citizens together, to meet to choose Sheriffs, would any Man question, but this

this is an unlawful Act, and a Subversion of the Ancient Government of the City; the usurping an Authority in the City, contrary to the King's Grant and the Charter? And after they are adjourn'd, if they will make Proclamation, and order the People to stay, and go on with the Poll, is not that the same Thing in point of Law? In the Case that Mr. Wallop puts, if there be any Disorders committed, precedent to the Magistrates dissolving the Society, that will not amount to a Riot: But if the Magistrate makes Proclamation for them to depart, and they stay after it, and a Disorder is committed, it is a Riot. And if there be no Disorder, it is a Rout, and an unlawful Assembly, if they continue together. But, they say, there is no Proof that the Gentlemen in the Information are Guilty of the Riot. Now, the being there, and Countenancing of it, is an unlawful Thing. If there be many Persons together, and three only do an unlawful Act, and the others give Protection (for Numbers is always a Protection) are not all these Gentlemen Guilty?

My Lord Chief Justice having repeated part of the Evidence, goes on—

“ The Defendants say, it was only a Mistake in the Law, we did all to a good Intent, and therefore it ought not to be deem'd a Riot. I must tell you, a Man cannot excuse himself of a Crime, by saying he was ignorant of the Law: If that be an Excuse, it is impossible to Convict any Man. If the Defendants were really Ignorant, that may be consider'd in another Place; the Fine may be the less. But as for these Gentlemen, they could not be ignorant of it; because the daily Practice before their Eyes, was for the Mayor to do it. But though it was otherwise before, it must be so now; they would have no Tory Mayor, and the Cry was, *No God bless the King, No, But the Protestant Sheriffs*: So that, in Truth, the King must be put out of his Throne, to put these two Sheriffs in it. It cannot be said any of the Defendants said these Words, but they were they that kept this Rabble together  
“ three

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If they continue together after the Assembly is dissolv'd, and no Disorder is committed, it is a Rout, and an unlawful Assembly.

If some of the Assembly commit Disorders, all that continue with them, and thereby Countenance them, are guilty of the Riot. Ignorance of the Law, no Excuse.

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## The T R Y A L of

" three Hours. Gentlemen, Consider of your Verdict, and find as you think fit.

The Jury withdrew, and in some short Time return'd.

The Rioters  
Convicted.

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*Foreman.* We find all Guilty that are in the Paper, viz. *T. Pilkington, S. Shute, H. Cornish, Lord Grey, Sir Tho. Player, S. Bethel, H. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Key, J. Wickham, S. Swinock, and John Jekyl the Elder.* Who were fined at the *King's Bench*, at *Westminster*, 26th June 1683.

And Fined.

|                              |   |                              |
|------------------------------|---|------------------------------|
| <i>Pilkington</i> 500 Pound, | } | <i>Freeman</i> 300 Marks,    |
| <i>Shute</i> 1000 Marks,     |   | <i>Goodenough</i> 500 Marks, |
| <i>Lord Grey</i> 1000 Marks, |   | <i>Deagle</i> 400 Marks,     |
| <i>Player</i> 500 Marks,     |   | <i>Key</i> 100 Marks,        |
| <i>Bethel</i> 1000 Marks,    |   | <i>Wickham</i> 100 Marks,    |
| <i>Cornish</i> 1000 Marks,   |   | <i>Swinock</i> 500 Marks,    |
| <i>Jenks</i> 300 Marks,      |   | <i>Jekyl</i> 200 Marks.      |

These Gentlemen (those of them that were living, and the Executors of those that were dead) procur'd this Judgment to be Revers'd in Parliament, by Writ of Error, after the Revolution; and prefer'd a Petition to King *William*, suggesting they were Convicted of the pretended Riot, by the Contrivance of *Sir John Moore, Sir Dudley North, Sir Peter Rich, and Sir Edmund Sanders*, the Chief Justice, and pray'd they might be accepted out of the Act of Grace.

Riot.

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*The Tryal of Captain THOMAS WALCOTT, at the Sessions-House in the Old-Baily, 12 July, 35 Car. II. 1683.*

*Clerk of the Arraignment.* Thomas Walcott,  
*Hold up thy Hand, &c.*

The Indictment.

" T H E Indictment sets forth, That on the  
" Second Day of *March*, in the 35th Year  
" of the King, and divers other Days and Times,  
" as well before as after, at the Parish and Ward  
" of *St. Michael Bassishaw, London*, he the said  
" *Thomas*



" Thomas Walcott did Maliciously and Traiterous-  
 ly, with divers other Traitors, to the Jurors  
 unknown, conspire, compass and imagine the  
 Death of the said King; and to stir up Insurrection  
 and Rebellion within this Kingdom, and to sub-  
 vert the Ancient Government thereof. And to  
 that End, did meet and consult with the said  
 Traitors, to bring these Treasons to Effect;  
 and promis'd to be aiding and assisting, and to  
 provide Arms for it; and did actually provide  
 several Arms, as Carbines, Blunderbusses and  
 Pistols, for the perpetrating these Treasons, a-  
 gainst the Duty of his Allegiance, and against  
 the Peace of our Sovereign Lord the King, &c.

Pleaded Not  
 Guilty.

To this Indictment he pleaded *Not Guilty*. Then  
*William Hone, John Rouse, and William Blague,*  
 were Arraign'd, and pleaded *Not Guilty* to their  
 Indictments, and the Court adjourn'd till the Af-  
 ternoon, when *Thomas Walcott* was brought to the  
 Bar again, and after some Challenges, the Jury  
 were Impannell'd.

*Hone, &c. Ar-*  
*raign'd.*

*Capt. Walcott.* I desire I may have Pen and Ink. *Walcott Try'd.*  
*Granted.*

After the King's Counsel had open'd the Matter,  
 Colonel *Rumsey* was call'd and sworn.

*Solicitor General. Col. Rumsey,* Pray give the  
 Court an Account, what you know of the Prisoner  
 at the Bar, of his being concern'd, either in the  
 Murder of the King, or in Raising Arms.

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*Col. Rumsey.* About the latter end of *October,*  
 or the beginning of *November,* I was with my Lord  
*Shaftsbury* late at Night. He told me that the  
 Duke of *Monmouth,* my Lord *Russel,* my Lord  
*Grey,* and Sir *Thomas Armstrong,* were at Mr. *Shep-*  
*pard's* House, a Merchant near *Lombard-street.* He  
 desir'd me to go, and know what they had done  
 about the Rising at *Taunton.* I did go, and Mr. *Shep-*  
*pard* carried me up to them; and they told me  
 Mr. *Trenchard* had fail'd them about the Men, and  
 they could proceed no farther at that time. I came  
 to my Lord the next Day, and told him of it, and  
 then he made his Preparation to be gone for *Hol-*  
*land.* He said, there was no Dependance upon  
 those Gentlemen that met, and he would leave

*Rumsey's Evi-*  
*dence.*

Message from  
 my Lord  
*Shaftsbury,* to  
 the Cabal at  
 Mr. *Sheppards.*

*England.* A Fortnight or three Weeks after that, there was a Meeting at Mr. *West's* Chamber in the *Temple*, and Mr. *Goodenough*, and Mr. *Wade*, and somebody else was there, but I cannot remember his Name. Captain *Walcott* was in *Holland* then. There it was said, Nothing was to be done by a general Rising; and that there was no surer way, than to take off the King and the Duke: And that could not be carried on, without Mr. *Ferguson*, so he was writ for into *Holland*, and he came out of *Holland* upon that Letter, and Captain *Walcott* with him. After Mr. *Ferguson's* coming back from *Holland*, there was very suddenly a Meeting again, and then it was concluded, that nothing could be Effected, without taking off the King and the Duke, or to that purpose. Mr. *Ferguson* was not there. There was two or three Meetings, before Capt. *Walcott* was there, to find out Men; and they could not find out a Number of Men, without which, Mr. *Rumbald* would not undertake it. So about three or four Meetings after, Capt. *Walcott* came, and he resolv'd, at last, to join in the Matter: But he would not have an Hand in Attacking the Coach, but he would Command a Party that should Charge the Guards. There were to be several Parties: One small Party was to have kill'd the Postillion, another to kill the Horses, and Mr. *Rumbald*, with a certain Number, to seize the Coach, and Capt. *Walcott*, the Guards. This was to be done, as the King came by Mr. *Rumbald's* House (commonly call'd the *Rye-House*) near *Hodsdon* in *Hertfordshire*, when the King came last from *New-Market*. Mr. *Rumbald*, and those who attack'd the Coach, were to fire Blunderbusses into it, and if they miss'd, they were to have done it with their Swords.

The Method agreed on, for Assassinating the King and the Duke at the *Rye-House*, as they came from *New-Market*.

Witness not to be examin'd by the Prisoner, till the King's Counsel have done with him.

Capt. *Walcott*. I would beg leave, my Lord-----  
L. C. J. You shall have leave to ask him any thing by and by, but you must first let the King's Counsel have done with him.

Col. *Rumsey*. This Resolution was taken last *February*; Mr. *Ferguson*, and Capt. *Walcott* came to this Town upon *As Wednesday*.

Serj. *Jefferies*. What other Meetings were you at, Sir? Col.

*Col. Rumsey.* This was the first Meeting, when the Prisoner at the Bar came in. It was at Mr. West's Chamber, before the King came from *New-Market*, and the Number of Men could not be got ready; so there were several Meetings afterwards at Mr. West's Chamber, to consult whether they could raise the Number they resolv'd upon; and there were Notes brought by Mr. *Goodenough*, and Mr. *Rumbald*, that they might not be deceived in the Number. And at that Time, Capt. *Walcott* was there, and did undertake to go to Mr. *Rumbald's* House, and, I think, did go down to the very Place. Capt. *Rumbald* insisted on having Fifty Men for this Enterprize.

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*Serj. Jefferies.* What other Meetings were you at with Capt. *Walcott*?

*Col. Rumsey.* I was at the *Salutation* Tavern in *Lombard-street*, and at the *Green-Dragon* on *Snow-hill*. There we discours'd of dividing the City into Twenty Parts, and how many Men could be raised out of every Part; and they were to be divided into Fifteenths, and every Man to lead a Fifteenth, that they might not be at a Loss. Mr. *Goodenough*, Mr. *West*, and Mr. *Wade*, were intrusted with this. *Goodenough* gave an Account of seven Parts of the Twenty, and said, out of them would be rais'd 2000 Men, and made an Estimate, that the other Thirteen would not raise above as many more; for those were the most considerable Parts, as *Wapping* and *Southwark*.

The Conspirators divide the City into Twenty parts in order to a general Insurrection.

*L. C. J.* What was the Reason the Design was not effected, as the King came from *New-Market*?

*Col. Rumsey.* The Fire happen'd, and brought the King sooner from *New-Market*, than the Men could be got ready. It was talk'd of doing it, the *Saturday* before *Easter*, but he came on the *Tuesday* before. The News came on *Friday* to Town, of the Fire happening at *New-Market*, and they were all in Confusion, and could not get their Men ready by *Tuesday*. *Ferguson* lodg'd then in *Covent Garden*, and sent for several to come to him, to see if Men could be got together against *Tuesday*, when the King was to come in, but it could not be done; and it was laid aside for that Time. They

The Assassination prevented by a Fire happening at *New-Market*, which brought the King to Town sooner than was expected.

had a Meeting iminediately after the Disappoint-  
ment. *Ferguson* was not there, but theré was  
Capt. *Walcott*, Mr. *West*, and Mr. *Goodenough*;  
and that there might happen no Accident after-  
wards to hinder it, it was resolv'd that Money  
should be raised to buy Arms, and Mr. *Goodenough*,  
and *Rumbald*, undertook to provide them.

*L. C. J.* At this next Meeting; then; had you  
any further Design upon the King?

A Plot to As-  
sassinate the  
King as he  
came from  
*Windsor*, &c.

*Col. Rumsey.* Yes my Lord, it was to be done a  
coming from *Windsor* to *London*, or from *Wind-*  
*for* to *Hampton-Court*, or the *Play-House*; and  
therefore that Arms should be ready against any Op-  
portunity that should happen, let it be what it  
would. And Mr. *West* did undertake to provide  
Arms, and he told me he bought them, and did  
not get his Money in six or seven Weeks after. A  
Day or two after, going to *Ferguson*; he told him  
now he might have his Money, if he would send a  
Note to Major *Wildman*; but after, he was told  
that Major *Wildman* would not pay it by Note, but  
he must send Mr. *Rumbald* to him for it, for he  
would trust no Body else but him. And so Mr. *West*  
did send Mr. *Rumbald*, and he was at his House by  
Six a Clock in the Morning, but he was gone out of  
Town an Hour before; so Mr. *West* went to Mr.  
*Ferguson*, and he then told him, he should have Mo-  
ney in Two or Three Days; and Mr. *West* did  
go to him, and he paid him 100 Pound.

*Att. Gen.* Was there Provision made, for a Ri-  
fing now again?

*Col. Rumsey.* Yes, This general Rifing, by this  
Division of the City, was intended to be ready a-  
gainst the first Opportunity that happen'd.

*Sol. Gen.* When was your last Meeting?

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*Col. Rumsey.* I think it was the very *Thursday*  
before the Discovery, at the *Salutation* in *Lombard-*  
*street*; and there was Capt. *Walcott*, Mr. *West*,  
Mr. *Wade*, the two *Goodenoughs*, Mr. *Nelthrop*,  
and my Self. On the *Friday* or *Saturday*, we had  
Inklings it was discover'd, and did meet at the  
*George* upon *Ludgate-Hill*.

*Att. Geo.* What was your Discourse and Reso-  
lution then?

*Col.*



Col. Rumsey. The Resolution was still to carry it on: We went thither, to know of Mr. Goodenough, what was done about the other Thirteen Parts. He told us he had no Account, but, he said, he thought we should have a Meeting on Saturday in the Afternoon, at Ludgate-Hill, at the George, where we should have his Answer; but the Discovery happening, there did only meet Mr. Horton, Mr. Bourn, ——— I don't know who the other was, there was a Fourth. Upon Monday, after the Discovery, we met at Capt. Tracy's there was Capt. Walcott, Mr. West, Mr. Wade, Mr. Nelthrop, the two Goodenoughs, and Mr. Ferguson. They exclaim'd against Mr. Keeling, who made the Discovery, and took Resolutions to be gone.

Serj. Jefferies. Have you ever been in Keeling's Company?

Col. Rumsey. I never saw him till the Thursday before the Discovery, when we met at the Salutation Tavern.

Capt. Walcott. Did I ever meet at Mr. West's Chamber, till his Majesty's Return from New-Market?

Col. Rumsey. There was one Meeting at the Five Bells in the Strand, where was only Ferguson, Capt. Rumbald, Mr. West, Goodenough, and my Self. Mr. Ferguson told us that Night, Capt. Walcott would come; the next Meeting we had at Mr. West's Chamber, and there he did come: This was when the King was at New-Market. The King was at New-Market, when He, and Mr. Ferguson came from Holland.

Mr. Keeling appear'd, and was Sworn.

Some time before the King went to New-Market, I was at the Sun Tavern, with Richard Rumbald, and Richard Goodenough. Goodenough call'd me out of the Room, and ask'd me what Men I could procure, to go down to New-Market. I ask'd for what End? He said, to kill the King and Duke of York. Before the King came from New-Market, he renew'd the Question several Times. I had, in the Interim, some Discourse with Burton and Thomson. Burton told me, that Barber and Thomson would be concern'd. On Friday after the Fire at

Keeling's Evidence of the Rye-House Plot.

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*New-Market*, *Rumbald* came to my House, to see those Men I could procure, and desir'd to see them on the Morrow. I met *Rumbald*, that Day, at the *Exchange*, and went with him, and met *Burton*, *Thomson*, and *Barber*, at the *Mitre Tavern* within *Aldgate*; and we discours'd of going down to his House, I think it is call'd the *Rye-House*. He said, there could not be a better Place for executing such a Design, it standing remote from Neighbours. As an Argument to prevail with them, he said, it would be keeping one of the Commandments to kill the King and the Duke of *York*, for it would save Abundance of Bloodshed; and acquainted them with the manner they design'd to effect it in. From thence, the Witnesses went to the *Exchange*, and after, to the *Dolphin* in *Bartholomew Lane*, where was *Rumbald*, *West*, *Goodenough*, and *Hone* the Joiner; and there they discours'd of the Time the King was expected home. *West* ask'd how many Swan Quills, Goose Quills, and Crow Quills, and what Sand and Ink they must have? They said, Six Swan Quills, Twenty Goose Quills, and Twenty or Thirty Crow Quills. Swan Quills were Blunderbusses, Goose Quills, Musquets, and Crow Quills, were Pistols, and Sand and Ink, Powder and Bullet. As to the Prisoner at the Bar, I was at the *Salutation Tavern*, and he was there; *West* call'd me *Culing*, which, he said, in *Dutch* was *Keeling*; and said, he hop'd to see me at the Head of as good an Army, at *Wapping*, as *Culing* was at *Cullen*. I suppose *Capt. Walcott* remembers it very well; I don't remember to have seen him any other Time, upon this Design. Some time before the Design was discover'd, *Goodenough* came to my House, and gave me a Paper, wherein, he told me, he had divided the City into Twenty Parts, and that one of them was for my Self; that I should communicate it to Nine or Ten Persons I could trust; and that they should go to several other Persons, and ask them, *Supposing the Papists should Rise, or there should be a French Invasion, are you in a Posture of Defence?* This was all we were to communicate; and this was to feel them, and see how many Men they could raise. He said, they

The Methods  
of inveigling  
the People to  
make an In-  
surrection.

they design'd to kill the King at the *Bull Feast*, and they would have these Men in readines. That the Thing should be laid upon the Papists; and that to draw in the poor People, they were to declare they should be eas'd of *Chimney Money*. I thought I did very ill in concealing this Design, and had no rest in my Mind till I discover'd it. I understood, I was intended to go down to *Rumbald's House* with the Men I was to raise, but I don't remember I was ask'd the Question.

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*Att. Gen.* Were you employ'd to Arrest my Lord Mayor?

The Lord Mayor Arrested by Keeling.

*Keeling.* I did Arrest my Lord Mayor.

*Att. Gen.* He was as a special Bailiff under the Coroner. He is a *Whitesalter* or *Oilman* by Trade, but he says he was put upon it by *Goodenough*.

*Zachary Bourn* was call'd, and sworn.

*Bourn.* The occasion of my knowing Capt. *Walcott*, was *Ferguson's* lodging at my House; Capt. *Walcott* us'd to come thither. Mr. *Wade* came presently after I came to Town, from the *Wells*, and said I must needs meet at the *Dragon* on *Snow-Hill*, where we met several others besides Capt. *Walcott*. The Business was a Design to raise Men, and divide the City into Twenty Divisions, in order to the securing of his Majesty and the Duke of *York*, and setting up the Duke of *Monmouth*. I think we never expressed it killing them at those Meetings. I think every time I met them, Capt. *Walcott* was there: Once I was at the *Salutation* in *Lombard-street*. They were to raise as many Men as they could in their Divisions, but they were not to tell the direct Business; but that if there should be occasion, or the Papists should rise, they might know their Strength, and what they were able to do. *Goodenough* brought an Account of about Four Thousand, Capt. *Walcott* was there then. The first Meeting I was at, was about ten Days before the Discovery. Mr. *West* was at some of them, and Capt. *Walcott* was at three of them, if not all.

*Bourn's Evidence concerning the Infurrection in the City, and setting up the Duke of Monmouth.*

*L. C. J.* What was to be done?

*Bourn.* They were to have seiz'd the Lord Mayor, the two Sheriffs, and some of the Aldermen, and the Chief Ministers of State about Town;

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and Mr. *West* said, it should be his Business to secure my Lord Keeper : He would call him to an Account with all his Heart ; he would put him in mind of *Colledge*.

*Att. Gen.* Were you employ'd to speak to the *Nonconformist* Ministers about it?

Resolution of  
the Conspira-  
tors on the  
Discovery.

*Bourn.* I would have spoken to two, but Mr. *West* said, the Ministers had destroyed all Designs, since *Constantine's* Time, and he would have nothing to do with them now. We met at Capt. *Tracy's* the *Saturday* before the Discovery, and that Evening we had some Intimation of a Discovery. I went again on *Monday* Morning, and Capt. *Walcott*, Mr. *Ferguson*, Mr. *Goodenough*, Mr. *West*, Mr. *Norton*, and Col. *Rumsey* was there, and one Capt. *Pottle* came in, but he did not stay. They Resolv'd on nothing then : I left them on a Debate of killing Mr. *Keeling*, because he had made the Discovery. And they said, they thought it better to stand to it with their Swords in their Hands, than to be hang'd.

*Capt. Walcott.* Did he ever hear me say any thing of Assassinating the King?

*Bourn.* I did never hear him discourse of that Matter ; the Discourse was about securing the King, when *Walcott* was there ; but it was said, at several Meetings, *There was no way like Lopping them*, by which we understood, the taking off the King and and Duke of *York* ; that was the usual Phrase, and I suppose the Captain has heard it.

Mr. *West* call'd, and sworn.

*West's* Evi-  
dence of the  
Insurrection  
and Assassina-  
tion.

Mr. *West.* My Lord, one Morning Capt. *Walcott* came to my Chamber, and discours'd concerning the Election of Sheriffs, carried on in the City, contrary to Justice, as we thought ; says he, will People do nothing to secure themselves? And with that, he said, there was an Insurrection design'd within three Weeks or a Month, that would make us free or worse. A little while after, he told me my Lord *Shaftsbury* was engag'd in such a Design, and had engag'd him in it ; And he had expectation of being a Colonel of Horse, and ask'd, if I would have any Command under him? And he told me then, to the best of my Remembrance, my  
Lord



Lord *Shaftsbury* had another Design upon the King and the Duke, as they came from *New-Market* in *October* last; but he abhorred any such thing, and would only be concern'd in the General Insurrection. He told me, I should lend him a Suit of Silk Armour, I bought about four or five Years ago, when the Popish Plot broke out. And he desir'd me to provide him a good stiff Tuck, which I did; but the Design being laid aside, it was left upon my Hands. I understood the Design was put off, by means of Mr. *Trenchard*, who had discours'd, about a Fortnight before, of great Forces he could raise in the *West*; and the Duke of *Monmouth* sent for him, but his Heart fail'd him, and he could not raise any Men: Upon which, my Lord *Grey* call'd him *Coxcomb*. This was about the 19th of *November*. After this, I understood by Capt. *Walcott*, that Mr. *Ferguson* had the Conduct of the Assassination in *October*. When that Design had miscarried, to the best of my Remembrance, Cap. *Walcott* told me there was another Design of Attacking the King and the Duke, at my Lord Mayor's Feast, in the Hall, or in their return Home, in *Paul's Church Yard* or *Ludgate*. Mr. *Ferguson* likewise did tell me the same Thing; but the King not Dining there, the Thing was disappointed. At other Times it was propos'd to do it, as the King and Duke went down the River, or at the Play-House, or coming from there. And Col. *Rumsey* said, he wonder'd the Lords and Great Men, who were so fond of the Thing, did not raise a Purse, and buy Some-body an Office, who should Rail against the Duke of *Monmouth* and the Whigs, and by that means get an opportunity of Access to the King's Person. After these Discourses, when my Lord *Shaftsbury* retir'd to *Holland*, Mr. *Ferguson* did so too, and Capt. *Walcott* with him. After Capt. *Walcott* and Mr. *Ferguson* return'd from *Holland*, Capt. *Walcott* was at my Chamber; and he did say, he was to Command that Party of Horse that were to Attack the Guards. It was to be done at *Rumbald's House*: They were to lie there *perdue*, till the King came just down upon them. That there was a Gate they were to pass through,

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The Conspirators fall out.

A Design to Assassinate the King at my Lord Mayor's Feast.

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The Method agreed on to Assassinate the King at the Rye-House.

that he could shut upon the Horse-Guards, that they should not be able to come into their Relief. *Rumbald* said, he would bring them off over the Meadows, by *Hackney-Marsh*. But the way the Prisoner approv'd of, was to retire within his Wall, and there keep till Night; it being a Place, they could defend against any Force, for a Day's Time. One Thing I omitted in the first Discourse with Capt. *Walcott*, about the Insurrection in *November*. He told me my Lord *Shaftsbury* was preparing a Declaration to be publish'd, in Case of an Assassination or Insurrection, which he would have several People draw, and they might pick one good one out of them all. He shew'd me a Paper, which was a Collection of all the Passages, in the Reigns of King *James* the First, *Charles* the First, and the present King's, which he call'd *Attempts to introduce Arbitrary Power and Popery*, and concluded, *taxing them with some Personal Vices, and that the Government was dissolv'd, and they were free to settle another Government.*

The Declaration to be publish'd on the Insurrection.

After the Disappointment, when the News of the Fire at *New-Market* came, they adjourn'd to my Chamber, and consulted how it might be done another Day; but it was said, the King would be at Home the next Day, and it was laid aside. We met the next Week, not at my Chamber, Col. *Rumsey* was mistaken in that, but at the *George* and *Vulture*. They discours'd of the late Disappointment, and that one Reason was, they had not Arms in readiness. (There was Capt. *Walcott*, *Goodenough*, *Ferguson*, one *Norton*, and *Ayliff*.) Then they agreed that ten Blunderbusses, twenty or twenty two Inches in the Barrel, thirty Carbines, twenty eight Inches, and thirty Cases of Pistols, fourteen Inches, should be bought. It was put upon me to provide them, because I was serviceable to them no other way; and could have a Pretence for buying them, having a Plantation in *America*; but Mr. *Ferguson* was to pay the Money. I did bespeak Arms, and paid for them with my own Money, and was not paid again a great while. At length Mr. *Ferguson* paid me in Four-score and Thirteen Guineas, which was something more than

than the Arms cost; and said, he had not the Money above half an Hour in his Hands, by which I did guess it was Mr. *Charlton's* Money. It was design'd, my Lord Mayor, the Sheriffs, and as many of the Lieutenancy as they could get, should be kill'd, and the Principal Ministers of State, as my Lord *Halifax*, *Rochester*, and the Lord Keeper, whom they would hang for the Murder of *Colledge*, on the same Post *Colledge* was hang'd on. Sir *John Moore* was to be hung up in *Guildhall*; your Lordships to be flead and stuff'd, and hung up in *Westminster Hall*, and many of the Pensional Parliament hang'd up, as Betrayers of the People's Rights.

The Conspirators design to Murder the Lord Mayor, Ministers of State, &c.

*Att. Gen.* Was this Gentleman present at these Discourses?

*Mr. West.* He was not at my Chamber so often as the rest, but he was there sometimes, when these Things were discours'd of. Upon the News of the Fire, says he, *I believe God shews his Disapprobation of the Thing*; says *Mr. Ferguson*, *I believe he reserves them for worse Punishment*. *Mr. Walcott* said, he desir'd to have his Name conceal'd, says *Ferguson*, *Why should you be asham'd, it is a Glorious Action, and such an Action, as I hope to see publickly Gratified by the Parliament: And question not, but you will be Fam'd for it, and Statues Erected for you, with the Title of Liberatores Patriæ*. This *Ferguson* was an Independent Parson; he said he had told some Nonconformist Ministers, and they desir'd him to forbear: That they were a silly People, and did not know how to distinguish between killing a Prince for difference of Opinion in Religion, and destroying a Tyrant for preservation of the Rights and Liberties of the People. He said, it was an Action would make all the Princes in the World tremble, and teach them to use their Subjects kindly. I ask'd what they would do with the King's Natural Sons, He said, They are good lusty Lads, we had as good keep them for Porters and Watermen: And for my Lady *Ann*, they might Marry her to some Country Gentleman, for a Breed, to keep out Foreign Pretences. There was a Treaty between the *Scots*, and our Men

They disagree  
with the *Scots*,  
because they  
were not for a  
Common-  
Wealth.

Men of Quality here; They would have Ten Thousand Pound to buy Arms, and came down at last to Five Thousand Pound, and the Earl of *Argyle* was to head them; but it broke off, because the *Scots* would not declare for a Common-Wealth the first Hour, and extirpating Monarchy and the Family of the *Stewarts*. We met at *Richard's* Coffee-House, and adjourn'd to the *Young Devil* Tavern: There was *Capt. Walcott*, *Rumsey*, *Holloway*, a Merchant at *Bristol*, and others. *Holloway* proposed, since the *Scotch* Business was broke off, they should try what Forces they could raise here; and *Ferguson* said, if Three Thousand Men could be had, he believ'd the Duke of *Monmouth*, and my Lord *Russel*, would appear at the Head of them; and the City was to be divided into Twenty Parts, as the other Witnesses testified; but I suppose Mr. *Bourn* forgot himself, for he told me he had spoken to one Parson *Lobb*, and he said he would try what his Congregation would do. After we had Intimation of the Discovery, they got Mr. *Keeling* in the City, and *Rumbald* discours'd him in the Presence of several People: He wish'd a great many Imprecations on himself, if he had discover'd. Then there was a Discourse of killing him: They propos'd to him to go out of Town, but he refus'd. Had not *Keeling* deceived them by his Protestations at the Tavern, some Body had kill'd him there. Then Mr. *Wade* said, if the Duke of *Monmouth* would go into the *West*, we might try a push for it; and the Prisoner at the Bar said, I am satisfied God will deliver the Nation, though he does not approve of the present Instruments.

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*Capt. Walcott*. I am not so natural a Fool, to think, for me to charge the Guards, when another Man kills the King, but I am as Guilty as he that kills him. Mr. *West* does tell your Lordship a very long Story, and sometimes he names one Gentleman, and sometimes another; I am fearful the Jury will be apt to apply all to me, who was the Man least concern'd, for I had the Gout for several Weeks, and Mr. *West* came several times to my Lodging to see me; but for Assassinating the



the King, it never enter'd into my Thoughts. But here are four Gentlemen, who by their own Confession are culpable. They, to wipe off their own Stains, are resolv'd to swear me out of my Life. For a Months time, that the King was at *New-Market*, I was not out of my Chamber, but when I scrambled to *Stephney*, to dip my Foot in every Well of Water I came by.

Mr. *West*. My Lord, I remember this Passage, That he was afraid he should not be able to draw on his Boot, because he had the Gout:

Mr. *Blathwait* appear'd and was Sworn, and prov'd a Letter sent by Cap. *Walcott* to Mr. Secretary *Jenkins*; wherein he acknowledges himself Guilty, and lays himself at his Majesty's Feet, and offers to discover all he knew relating to *England*, *Scotland* or *Ireland*. He says, that his Intimacy with a *Scotch* Minister occasion'd his knowing very much, and assures his Majesty that the Business was laid very broad, &c.

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*Walcott's Letter to the King confessing his Guilt.*

Capt. *Richardson* was Sworn, and gave an Account of the Prisoner's Endeavours of sending to Col. *Rumsey* and Mr. *West* to be tender of him.

Capt. *Walcott* in his Defence observes, That the greatest Part of the Evidence that had been given affected other People: Insists on the Improbability of his Engaging with Men in such an Undertaking that he never saw: Says he knew of an Insurrection, which he took to be but Misprision, being to have no Hand in it, and deny'd he knew of any Design against the King's Life.

*Walcott's Defence.*

L. C. J. Your Habitation being in *Ireland*, What do you here?

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Capt. *Walcott*. I was invited by my Lord *Shaftsbury* to go Governour to *Carolina*; but, it being some Time before I came over, my Lord gave it to another; then I went with my Lord *Shaftsbury* into *Holland*, and when he died I returned to *London*, where I fell ill of the Gout. Another thing, my Son was here, and I design'd to Marry him, and make Provision for my Younger Children, and I hope it is no great Crime for a Man of an Estate to be here.

L. C. J.

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Meeting at a  
Consult, and  
knowing the  
Design, is  
Treason.

The Evidence  
summ'd up.

Prisoner found  
Guilty.

L. C. J. " Gentlemen of the Jury, The Prisoner at the Bar confesses his being at several Consults. Now, to be at a Consult upon a Treasonable Design, to meet for that Purpose, this is downright Treason (and not Misprision of Treason, as he apprehends) though he say nothing. But without doubt the Meeting several Times upon this Design, and Concealing it, makes him guilty of High Treason: And then my Lord having repeated the Substance of the Evidence, concluded that the Evidence was very strong, and stronger than could be expected in the Case of Treason: Whereupon the Jury withdrew for about half a Quarter of an Hour, and brought the Prisoner in Guilty.

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*The Tryal of WILLIAM HONE, 12 July,  
35 Car. II. 1683.*

The Indictment.

" THE Indictment sets forth, That *William Hone*, late of *London*, Labourer, the 2d Day of *March*, in the 35th Year of King *Charles the Second*, at the Parish and Ward of *St. Michael Bassishaw, London*, and divers other Days and Times, as well before as after, did conspire, compass and imagine, not only to Depose the said King, but to put him to Death, and raise a Rebellion within this Kingdom; and to that End did Traiterously Meet and Consult with divers others discontented Subjects, to the Jurors unknown; and also did procure and prepare Arms, to wit, Blunderbusses, Carbines, and Pistols, for the Executing his said Traiterous Purposes, against the Peace of our Sovereign Lord the King, &c.

Page 130.

Sir Ed. Saunders.

The Prisoner cannot plead Guilty to part and Not-Guilty to the rest.

*Hone*. I never provided Arms, but I am Guilty of the Conspiracy.

L. C. J. You must confess all or deny all.

*Hone*. Then I can truly say I am Not-Guilty. Then the Court Adjourn'd.

*Friday July 13*, he was brought to the Bar again.

*Hone*. I desire to retract my Plea, and plead Guilty.

L. C. J.

*L. C. J.* Tell us what you were to have done in this Bloody Matter.

*Hone.* I was ask'd by one Mr. *Richard Goodenough*, to go along with him; and I ask'd, Whither, and he would not tell me; but I understood it was to kill the King and Duke of *York*; but he did not tell me the Place.

*Serj. Jefferies.* He does not confess fully, we desire to try him.

Then the Jury were Sworn, and Mr. *Keeling* was call'd.

*Keeling.* The first Time I saw the Prisoner was at the *Dolphin* Tavern, when the Arms were agreed upon, he was there then, and we discours'd of the King's coming from *New-Market*, and Mr. *West* ask'd Mr. *Rumbald*, how many Swan Quills, Goose Quills, and Crow Quills, and how much Sand and Ink we must have: I think the Prisoner must needs remember it as well as I, for he was by and heard all the Discourse. By Swan Quills were meant Blunderbusses, by Goose Quills Muskets, and by Crow Quills Pistols, and by Sand and Ink Powder and Bullet; and the Prisoner told me he was one of them that was to go down to the *Rye* to Assassinate the King; and since that, at a Coffee-House in *Swithin's-Alley*, he told me, It would never be Well till the Blackbird and the Goldfinch were knocked on the Head, by whom he said he meant the King and Duke of *York*.

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He confess'd  
he was to be  
one of the As-  
sassins.

*Hone.* As to the Blackbird I own it, but I never heard a Word of the Goldfinch till now.

Mr. *West* Sworn.

Mr. *West.* I was at the *Dolphin* Tavern, and Mr. *Keeling* came in; there were several Things said of Swan Quills, Goose Quills and Crow Quills, but this Man did not come in till this Discourse was over: Mr. *Goodenough* undertook to provide the Men, and said he would try if the Prisoner would make an Attempt on the Duke without the King, and afterwards told me he had spoken to the Prisoner about it: He was once at my Chamber, says he, *Master, Shall we do the Thing?* and I think he said, that if the Duke of *Monmouth* would be true and appear, he could bring

He was drawn  
in by Good-  
enough.

Mr. West, the  
Evidence  
check'd for  
offering some-  
thing in Ex-  
cuse of the  
Prisoner.

Sir Nicholas  
Butler depos'd,  
the Prisoner  
was engag'd  
in a Design to  
kill the King  
with a Cross-  
Bow.

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Capt. Richard-  
son depos'd,  
That the Pri-  
soner confess'd  
his being con-  
cern'd in the  
Rye-House Plot,  
and in the De-  
sign of killing  
the King with  
a Cross-Bow.

bring Fifty or Sixty honest Men from t'other Side the Water to do the Business, and I saw him often in Company with *Mannius*, that was to be another of the Assassins: He was basely deluded in this thing by *Goodenough*; he was a pretty honest Fellow before this Time.

*L. C. J.* Do you come to justify these things; It is very unusual for one in your Condition to use such Expressions in such a Case.

*Serj. Jefferies.* He is not worthy the Mercy the King has shewn him.

*Mr. West.* It was a Word slipp'd from me Un-  
awares.

Sir *Nicholas Butler* was Sworn, and depos'd, That the Prisoner and some others had conspir'd to Kill the King and the Duke of *York* with Cross-Bows, as they should come to my Lord-Mayor's Show, some Years ago when Sir *Francis Chaplain* was Lord Mayor; that he acquainted the King with it, and the Prisoner confess'd the Design. Sir *Nicholas* further depos'd, That since the Prisoner was taken, he had told several, he was one of those that was to Kill the King and the Duke, and he was to have 20 *l.*

Captain *Richardson* depos'd, That he was by when Sir *Nicholas Butler* examin'd him as to his being concern'd in the Conspiracy to Kill the King and the Duke; and that the Prisoner confess'd he was to be one of them, and said, He was for Killing the King and Saving the Duke: But *Goodenough* was for both, and he told them the whole Business of the *Rye*; he said he did not know the House, but it was the Place where the King was to be Murder'd; and that at first he was not willing to stir in it, but *Goodenough* told him he should have 20 *l.* to buy him Horse and Armour; and that which Sir *Nicholas* said about the Cross-Bows he did likewise own.

*L. C. J.* What say you to this Treasonable Design of Hiring your self out to be one of the Persons to Kill the King.

*Hone.* I say, I did not know the Place where nor when, at the Time it was proposed about the *Rye*.

*L. C. J.*



L. C. J. But what say you as to the Undertaking to Kill the King, the other is but Circumstance?

Hone. My Lord, I was drawn into it by Mr. Goodenough.

L. C. J. What say you to the Design of Killing the King with Cross-Bows.

Hone. I did never design it; I was only told by a Fellow, that there was a Shop-keeper liv'd hard by would do such a Thing, and I told Sir *Nicholas Butler* immediately.

L. C. J. Here is full Evidence against you, you had best to consider with your self, and repent of this wicked Design, What Religion are you of?

Hone. Religion, my Lord! I hear several Sorts of Men, sometimes Baptists, sometimes Independents, and sometimes Presbyterians.

Then the Lord Chief Justice directed the Jury to find him Guilty; which they did without going out of Court.

The Prisoner confesses his being concerned in the Conspiracy to kill the King at the *Rye*, but denies the Business of the Cross-Bow.

Acknowledges he was a Dissenter.

He is Convicted.

*The Tryal of the Lord RUSSEL, 13 July, 35 Car. II. 1683.*

My Lord was set within the Bar.

*Clerk of the Arraignments. William Russel, Hold up thy Hand. (Which he did.)*

“ THE Indictment sets forth, That *William Russel*, late of *London*, Esq; the Second Day of *November*, in the 34th Year of King *Charles* the Second, and divers other Days and Times, as well before as since, in the Parish and Ward of *St. Michael Bassishaw, London*, did, with divers other Traitors, to the Jurors unknown, conspire, compass and imagine the Death of the King, and to that End did meet and consult, and then and there concluded to raise a Rebellion, and to seize and destroy the King's Guards, against the Duty of his Allegiance, against the Peace, &c.

The Indictment.

Pleaded Not-Guilty.

To which Indictment he pleaded, *Not-Guilty*.  
*Lord Russel*. My Lord, I thought a Prisoner had never been Arraign'd and Try'd at the same Time; I have been a close Prisoner.

*Sir Edm. Saunders*.

*L. C. J.* For Crimes of this Nature, my Lord, we do it continually.

*Sir Rob. Sawyer*.

*Attorn. General*. My Lord hath no Reason to complain; for he hath had Notice ever since *Monday* Se'night; he hath had Counsel to advise him, and there hath been no Sort of Liberty deny'd him, which becomes any Subject to have in his Condition.

*Lord Russel* had Counsel to advise him.

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*Lord Russel*. My Lord, I have Witnesses that will not be in Town till Night; I did not know the Matter I was charg'd with, and I think it very hard I can't have one Day more.

*Att. Gen.* My Lord, You were examin'd on certain Questions, that you might know what the Matter was you were accus'd of.

Chief Justice refuses to defer the Tryal.

*L. C. J.* Without the Consent of the King's Counsel we cannot put off the Tryal.

*Lord Russel*. I never had a Copy of the Pannel.

*L. C. J.* I gave Order for it my self: I know the King did not design to be hard upon my Lord in his Tryal, but that he should have as fair a Tryal as ever Noble Person ever had.

*Lord Russel*. I had no Pannel deliver'd me: I had some Names of People that they said were usually on Juries.

The Pannel deliver'd him before the Tryal.

*L. C. J.* This is not like a Pannel made up by the Sheriffs in ordinary Cafes between Man and Man: There they make a formal Pannel, from which they cannot depart when that is once return'd; but in Criminal Cafes, because of the Challenge, they return Sixty or Eighty; and I presume your Lordship was attended with the Names deliver'd.

*Serj. Jefferies*. How many Names were deliver'd?

*Mr. Atwood*. Above One Hundred.

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*Lord Russel*. How can I know who to Challenge?

*Att. Gen.* My Lord, you will have Cause to complain, if they are not the same Men we now shall call.

Lord

Lord *Russel*. My Lord, I must insist on this Tryal being put off till the Afternoon.

*L. C. J.* The King's Counsel do not think it reasonable.

Lord *Russel*. May I not have Pen and Ink, and make use of what Papers I have? His Papers allow'd him.

*L. C. J.* Yes, by all means.

Lord *Russel*. I desire my Wife may assist me in Writing.

*Att. Gen.* My Lord, you may have two Persons to assist you, if you please. And Persons to write for him.

The Jury call'd.

*Clerk of the Crown.* Call *John Martin*. (who appear'd.)

Lord *Russel*. Are you a Freeholder of Forty Shillings a Year? Challenge for want of Freehold in the City.

*L. C. J.* There is no Pannel made, in *London*, of Freeholders: We have very few Freeholders capable of being Impannell'd.

Lord *Russel*. The Stat. of the 2 *Hen. V.* is positive that no Person shall be Judged, in Case of Life and Death, but by those that have Forty Shillings a Year.

The Statute was Read.

Lord *Russel*. This is not the Case of Life and Death; that that I read is positive, and if your Lordship will not allow it, I desire my Counsel may argue it, it being Matter of Law.

*L. C. J.* My Lord, we will hear your Counsel: What Counsel do you desire?

Lord *Russel*. *Mr. Pollexfen*, *Mr. Holt*, and *Mr. Ward*.

They came into Court.

*L. C. J.* Gentlemen, my Lord *Russel* excepts to the Jury, because they have not Freehold within the City of *London*, and desires you may be assign'd his Counsel, to make it out, that this is a Cause of Challenge. Council allow'd to Argue it.

The Counsel for the Prisoner Argued, that at Common Law, a Freehold was necessary to make a Juryman: That the Statute of the 2 *Hen. V. c. 3.* says, that none shall be admitted to pass upon any Inquest, on the Tryal of the Death of a Man, except he have Lands and Tenements, of the yearly

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Value of Forty Shillings; and that that Statute made no Distinction between Cities and Counties at large. That the 1 Inst. Fo. 157. takes notice, that the Freehold ought to be in the same County. That the 7 *Hen. VII.* takes Notice that there were Challenges in *London*, for that they had not Forty Shillings *per Ann.* and this Statute was made to take away the Challenge of Forty Shillings Freehold; which is a strong Evidence, that before that Time it was a good Challenge. That the 4 *Hen. VIII. c. 3.* says, that the *London* Jurors, in Civil Causes, (but provides only in Civil Causes) shall be admitted, that have Goods to the Value of One hundred Marks. That if the first mentioned Statute or the Common Law, had not requir'd Freehold, there had been no need of the 4 of *Hen. VIII.* to qualify those who had Goods to the value of One Hundred Marks. That the 23 *Hen. VIII. c. 13.* says, that in Cities and Boroughs, in Tryals of Murder and Felony, if a Freeman of *London* is to be try'd, Freemen may be upon the Jury, though they have not Freehold. (But there is a *Proviso* as to Knights and Esquires, who are Arraign'd in Boroughs, that it shall not extend to them) though in the Cases of Felony and Murder; and that this Statute did not extend to Treasons, so the Law stood as it was before in Treasons. That in Civil Causes, if this Qualification were wanting, an Attaint would lie: That indeed in Criminal Cases, no Attaint did lie. But if in Civil Causes Freeholders be required, and an Attaint lies if there be not; it is not reasonable to think, but there should be as great a Regard to the Life of a Man, as to his Estate; and that Freehold was the only Qualification the Law required in a Jurymen, if he were not outlaw'd, &c. That from the 7 of *Hen. VII.* it might be observ'd, That at Common Law, it was not only requisite that the Jurors should have sufficient Freehold, but it ought to lie within the Hundred. And that Freehold in the Wards in the City, is the same with Freehold in the Hundreds in the County; and that there was no Statute, that made a difference between *London* and other Counties. And from the whole, pray'd that the Challenge might be admitted.

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That the  
Freehold  
ought to lie  
in the Ward  
or Hundred.

The



The King's Council reply'd: That those Gentlemen had not prov'd, by any Books, that at Common Law, it was requisite for a Juryman to have Freehold. That in all Criminal Cases, at this Day, where the Statute does not direct it, as in Riots, and other Informations for Misdemeanors, there is no Law restrains them, and they may be tried by any Men, there is no particular Exception against. That as to the 2 *Hen. V.* it was a Challenge in Cases of Murder and Felony. But that Statute, as to Treason, was repealed by the Statute of Queen *Mary*, which says, *That all Tryals for Treason, shall be as by the Common Law.* And that this has been the constant Practice in all other Cities, as well as *London*. That in the Case of the *Quo Warranto* brought against the City of *Worcester*; the Judges of the *King's Bench*, did consult the Judges of the *Common Pleas*, and it was resolved the Challenge was not good.

The King's  
Council Answer them.

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*L. C. J. Mr. Polexfen*, Do you find any Judgment, that in Cases of Treason, by Common Law, they might except for want of Freehold.

*Mr. Polexfen*. No my Lord.

*L. C. J.* I take it, that in Cases of Treason or Felony, at Common Law, they had no Liberty to except to Jurors, for want of Freehold, but that any good and lawful Men might pass. That the Stat. of *Hen. V.* was alter'd by the 1 and 2 of *Ph.* and *Mary*, which restor'd the Common Law as to this Point. The Lord Chief Baron, *Mr. Justice Windham*, *Mr. J. Jones*, *Mr. Justice Charlton*, *Mr. Bar. Street*, and *Mr. J. Withins*, were of the same Opinion. *Mr. Justice Withins* was of Opinion, That though it were a Cause of Challenge in a County at large, yet it is not a Cause of Challenge in Cities, where Freeholders are not to be found.

The Challenge  
over-ruled.

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*L. C. J.* Your Lordship has no Hardship in this Case; for the Reason of the Law for Freehold in a County, is that no slight Persons should be put upon a Jury; But in the City, the Persons that are Impannell'd, are Men of Quality and Substance; therefore please to apply your Self as the Jury is call'd, and make your Exceptions.

The Jury were call'd, and after my Lord *Russel* had Challeng'd Thirty one, these Gentlemen were Sworn.

The Jury  
sworn.

|                         |   |                         |
|-------------------------|---|-------------------------|
| <i>John Martin,</i>     | } | <i>William Butler,</i>  |
| <i>William Rouse,</i>   |   | <i>James Pickering,</i> |
| <i>Jervas Seaton,</i>   |   | <i>Thomas Jove,</i>     |
| <i>William Fashion,</i> |   | <i>Hugh Noden,</i>      |
| <i>Thomas Short,</i>    |   | <i>Robert Brough,</i>   |
| <i>George Torriano,</i> |   | <i>Thomas Omeby.</i>    |

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*Rumsey's* Evidence concerning the Cabal at Mr. *Sheppard's*.

Mr. *Attorney* open'd the Indictment, and the Nature of the Evidence, and took occasion to mention my Lord *Essex* as one of the Conspirators, who, he said, had that Morning prevented the Hand of Justice upon himself.

Then Col. *Rumsey* was call'd, and sworn.

Col. *Rumsey*. I was at my Lord *Shaftsbury's* Lodging, at *Wapping*, the latter end of *October*, or the beginning of *November*: He told me there was met at Mr. *Sheppard's* House, the Duke of *Monmouth*, my Lord *Russel*, my Lord *Grey*, Sir *Thomas Armstrong*, and Mr. *Ferguson*; and he sent me to know what Resolution they had taken about the Rising at *Taunton*: They answer'd me, that Mr. *Trenchard* had fail'd them; who when he came up to Town first, at the Term, assur'd them, that in three or four Hours time, he could have One Thousand Foot, and Three Hundred Horse; but now it came to be try'd, he answer'd, it was not possible for him to undertake it, for People would not rush into it of a sudden, but have some time to prepare for their Families. Mr. *Ferguson* made the Answer, and I think my Lord *Grey* said something to the same Purpose. They said, my Lord *Shaftsbury* must be contented; and upon that he took his Resolution to be gone. I staid with the Company about a Quarter of an Hour, and then went away.

Att. Gen. Was there any Discourse about a Declaration while you was there?

Col. *Rumsey*. I am not certain whether I did hear something about a Declaration there, or Mr. *Ferguson* did report it to my Lord *Shaftsbury*, that they

they had debated it. There was some Discourse about seeing what Posture the Guards were in at the *Savoy*, and the *Mews*, if they might not be surpriz'd; and, I think, the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armstrong*, undertook to take a View of them: All the Company debated it.

*Serj. Jefferies.* Did they take Notice a Rising was intended?

*Col. Rumsey.* Yes, The 19th of *November* was appointed for the Rising, I was to be ingag'd in it. I was to have gone to *Bristol*, by my Lord *Shaftsbury's* Appointment.

*Serj. Jefferies.* Did you find the Prisoner averse to the Proposal of seizing the Guards?

*Col. Rumsey.* He was agreeing to it. Upon my return from them, my Lord *Shaftsbury* said he would be gone, and accordingly did go.

*Serj. Jefferies.* If my Lord *Russel* please to ask him any Questions, he may.

Lord *Russel*. I have very few Questions to ask, for I know little of the Matter. I came there accidentally, to speak with Mr. *Sheppard*; I was just come to Town, but there was no Discourse of surprizing the Guards, nor no Undertaking of raising an Army. I desire to know if I gave any Answer to any Message about the Rising? I was up and down; I do not know what they might say when I was in the Room. I was tasting of Wine.

*Col. Rumsey.* My Lord *Russel* did discourse about the Rising of *Taunton*.

Lord *Russel*. It was Sir *Thomas Armstrong* that convers'd with Mr. *Trenchard*. How should I discourse of the Rising at *Taunton*, that knew not the Place, nor had knowledge of *Trenchard*? I think the Witness was ask'd, if I gave my Consent to the Rising.

*Col. Rumsey.* Yes, my Lord, he did,

Mr. *Sheppard* was call'd, and sworn.

Mr. *Sheppard*. In the Month of *October* last, Mr. *Ferguson* came to me, in the Duke of *Monmouth's* Name, and desir'd the Conveniency of my House for him, and some other Persons of Quality, to meet there; and in the Evening, the Duke

*Sheppard's Evidence concerning the Cabal at his House.*

The Guards  
View'd.

of *Monmouth*, my Lord *Grey*, my Lord *Russel*, Sir *Thomas Armstrong*, Colonel *Rumsey*, and Mr. *Ferguson* came. Sir *Thomas Armstrong* desir'd none of my Servants might come up; so I fetch'd Wine, and what they wanted. The Substance of their Discourse was, how to surprize the Guards; and in order to that, my Lord *Grey*, the Duke of *Monmouth*, and Sir *Thomas Armstrong*, as I remember, went one Night to the *Mews*, or thereabouts, to see the King's Guards; and the next time they came to my House, I heard Sir *Thomas Armstrong* say, The Guards were very Remiss, and not like Soldiers, and the Thing was feasible, if they had strength to do it. I remember they met twice, my Lord *Russel* was there both times, as I remember.

*Att. Gen.* Did they come in their Coaches, or on Foot, in the Night-time?

Mr. *Sheppard*. It was in the Evening; I did not let them in, I saw no Coaches: They came in immediately one after another, and went up readily into the Room.

*Serj. Jefferies*. Had you any particular Business with my Lord *Russel*, or he with you?

Mr. *Sheppard*. Not at that time; but since I have, about the Affairs of my Lord *Shaftsbury*.

*Serj. Jefferies*. Do you remember any Papers read at that Time.

Mr. *Sheppard*. Yes, somewhat in the nature of a Declaration, Read by Mr. *Ferguson*, setting forth the Grievances of the Nation, in order to a Rising. I can't remember the Particulars, it was shewn only, I suppose, for Approbation.

*Att. Gen.* Who was it shew'd to?

Mr. *Sheppard*. Sir *Tho. Armstrong*, as I remember, the Duke was present, and I think Col. *Rumsey*.

Col. *Rumsey*. No, I was not, it was done before I came.

*Foreman of the Jury*. Can you say my Lord *Russel* was there when it was read?

Mr. *Sheppard*. I can't say that, but he was there when they talk'd of seizing the Guards; I am sure he was at one Meeting about *Michaelmas-Day*; I think he was at both, but I can't be positive.

Lord



Lord *Russel*. I never was but once at your House, and there was no such Design as I heard of.

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My Lord *Howard* was call'd and Sworn.

My Lord *Howard* dates the Original of this Plot from that ferment that was in the City about the Election of Sheriffs, gives along account of the Application made to him by Capt. *Walcott*, and his introducing *Walcott* to my Lord *Shaftsbury*: That he, my Lord *Howard*, was with my Lord *Shaftsbury* when he Absconded; that my Lord *Shaftsbury* complain'd to him, That his Design, and the Design of the Publick was Obstructed by the unhandsome Disappointment of the Duke of *Monmouth* and my Lord *Russel*, who had withdrawn themselves, not only from his Assistance, but from their own Engagements. For when he had got such a formed Force as he had in *London*, and expected to have it answer'd by them in the Country; they did recede from it, and told him they were not in a Condition to concur with him at that Time. This he look'd on but as an artificial Excuse, and as an Instance of their Intentions, wholly to desert him: But notwithstanding there was such a Preparation made in *London*, that if they were willing to lose the Honour of being Concurrent with him, he was able to do it himself, and did intend speedily to put it in Execution; and said, there was Ten Thousand brisk Boys ready to follow him whenever he held up his Finger: And my Lord *Howard* depos'd further, That he went to *Moor-Park* the next Day, where the Duke of *Monmouth* was; and told him the great Complaint my Lord *Shaftsbury* made. Says the Duke, I think he is Mad; I was so far from giving him any Encouragement, that I did tell him from the beginning, and so did my Lord *Russel*, there was nothing to be done by us in the Country at that time: That he return'd to my Lord *Shaftsbury* and told him, the Duke disown'd he ever gave him Encouragement: Says my Lord *Shaftsbury*, 'tis False, and I have reason to believe there is some artificial Bargain between his Father and him to save one another; and says he,

Lord *Howards*  
Evidence,  
concerning  
the Insurrection.

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A design to alter the Government to a Common-wealth.

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we have different Prospects, we are for a Common-Wealth, and he hath no Design but his own Personal Interest, and that will not go down with my People: That he was afterwards with the Duke of *Monmouth*; who told him my Lord *Russel* had been with my Lord *Shaftsbury*, and put off the Day of the Rendezvous; but upon Condition, that those Lords and divers Others should be in a readiness to raise the Country in a Fortnight: That the Duke said he had been at *Wapping* all Night, and never saw a Company of Bolder and Brisker Fellows in his Life: That he had seen the Avenues to the Tower, and did not think it hard in a little Time to possess themselves of it.

Hear-say no  
Evidence.

Lord *Russel*. My Lord, I think I have very hard Measure; here is a great deal of Evidence by hear-say,

L. C. J. This is nothing against you, I declare it to the Jury.

A Design upon  
the King's  
Life.

Lord *Howard*. About the 17th or 18th of *October*, Capt. *Walcott* came to me, and told me they were resolv'd positively to Rise, and did believe that a smart Party might perhaps meet with some Great Men. I met the Duke and told him, there was some dark Intimation as if there might be an Attempt upon the King's Person: That he struck his Breast, and with great Emotion of Spirit, said, *God so kill the King! I will never suffer that.* And the Day the King came from *New-Market*, we had a Notion convey'd among us; there was a Design upon the King; and my Lord *Grey* said, *By God if they do attempt such a Thing, they can't fail;* and we were in great Anxiety of Mind, till we heard the King's Coach was come in: This failing, it was next determin'd to be done on the 17th of *November*, the Anniversary of Queen *Elizabeth*: That failing, and my Lord *Shaftsbury* being told things were not Ripe in the Country, took Shipping and got away; and from that Time I heard no more of him, till I heard he was Dead: After this we consider'd, we had gone so far, and Communicated it to so many, that it was unsafe

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to

to make a Retreat; and that to manage so great an Affair, it would be necessary there shou'd be some general Council to take care of the whole; therefore, about the middle of *January* last, we erected a Cabal, consisting of Six Persons, viz. The Duke of *Monmouth*, my Lord *Essex*, my Lord *Russel*, Mr. *Hambden*, jun. *Algernon Sidney*, and my Self, and about that Time we met at Mr. *Hambden's* House, and it was debated whether the Insurrection was most proper to be begun in *London* or the Country. The Duke of *Monmouth* insisted that it was impossible to oppose a form'd Force with a Rabble hastily got together; and therefore whatever Numbers could be gather'd in the City, would be suppress'd quickly before they could Form themselves: Therefore, it would be better to begin it at such a distance from Town, where they might have an Opportunity of Forming themselves, and would not be subject to the like pannick Fear as in Town; where half an Hour wou'd convey the News to those Forces, that in another half Hour would be ready to Suppress them: And that it being done at a distance from the Town, the King would be put upon this Dilemma, either to send down his Forces, and leave the City naked, or give them time to Form in the Country if he did not send: We consider'd what Towns and Countries were most dispos'd to Action, what Arms and Money would be Necessary: And the last and greatest Consideration was, how we might draw in the *Scotch* to joyn with us. About Ten Days after, the same Persons had a meeting at my Lord *Russel's*, and there it was Resolved to send some Persons to my Lord *Argyle* in *Scotland*, to settle an Understanding with him, and give an Account of the State of *Scotland*. The Persons agreed on were Sir *John Cockram*, my Lord *Melville*, and another: *Col. Sidney* was to take care of that Business, and he afterwards told me, he had sent *Aaron Smith*, and given him 60 Guineas for his Journey. We considered these Meetings might have occasion'd some

Lord *Howard's* Evidence, concerning the Cabal of Six that met at Mr. *Hambden's*, among whom my Lord *Russel* was One.

The *Scotch* invited into the Conspiracy.

Obser-

Observations upon us, and agreed not to meet again till the return of that Messenger.

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*Mr. Att. Gen.* Did my Lord *Russel* sit there as a Cypher, What did he say?

*Lord Howard.* Every one knows my Lord *Russel* is a Person of great Judgment, and not very lavish in Discourse: We did not put it to the Vote, but I took it that all there gave their Consent.

*Lord Russel.* We were People that did meet very often; but there was no Debate of any such Thing, or putting any thing in Method. But my Lord *Howard* is a Man hath a voluble Tongue, talks very well, and is full of Discourse, and we were delighted to hear him.

*Att. Gen.* *Aaron Smith* did go, and *Campbell* he went, for he is here taken.

*Mr. Atterbury* Sworn.

*Atterbury's*  
Evidence, as  
to the Appre-  
hending the  
Secret Agents.

*Atterbury.* I did not apprehend Sir *Hugh Campbell* my self, but he is now in my Custody: He and his Son were making their Escape out of a Wood-mongers House. He own'd he had been in Town Four Days, and that, in that time he had been at their Lodgings; and that he and his Son, and one *Baily* came to Town together.

*Att. Gen.* Now we have fix'd this upon my Lord, we shall give an Account that those Persons that were to Rise, always took them as their Pay-masters, and expected their Assistance.

*Mr. West* was Sworn.

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*West's* Evi-  
dence, as to  
my Lord *Rus-  
sel's* Populari-  
ty.

*Mr. West.* As to my Lord *Russel*, I never had any Conversation with him. *Col. Rumsey* and *Mr. Ferguson* did tell me, that my Lord *Russel* intended to go down into the West, and take *Mr. Trenchard's* Place who had fail'd them; and they always said my Lord *Russel* was the Man they most depended on, because he was look'd upon as a Person of great Sobriety.

*Lord Russel.* Can I hinder People from making use of my Name? To have this brought to Influence the Gentlemen of the Jury, and inflame them against me is hard.

*L. C. J.* This giving Evidence by Hear-say, will not be Evidence.

*Att.*



*Att. Gen.* 'Tis not Evidence to Convict a Man, but it Confirms what the other Swears.

*Serj. Jefferies.* We have Evidence without it, we won't trouble your Lordship any further.

*Lord Russel.* My Lord, I cannot but think my self mighty Unfortunate to stand here Charg'd with so high and heinous a Crime; and that intricate, and intermix'd with the Treasons and horrid Practices and Speeches of other People: The King's Counsel taking all Advantages, and improving and heightning Things against me. The Gentlemen of the Jury are Men of Consciences, I hope they value innocent Blood, and will consider the Witnesses that Swear against me, Swear to save their own Lives; and for *Col. Rumsey*, who is known to have been so highly oblig'd by the King and the Duke, for him to be capable of such a Design of Murdering the King, I think no Body will wonder, if to save his own Life, he will endeavour to take away mine, neither does he Swear enough to do it. And then if he did, the Time by the 13th of this King is elapsed; it must be Prosecuted within Six Months: And by the 25 *Ed.* 3. a Design of levying War is no Treason, unless by some Overt-Act it appear. I desire to know what Statute I am to be Try'd upon.

*Lord Russel's*  
Defence.

He Objects  
that the Wit-  
nesses Swear  
against him  
to save their  
own Lives.

*Att. Gen.* We go upon the 25 *Ed.* 3. And to prepare Forces to fight against the King, that is a Design within that Statute to Kill the King, and to design to Depose the King, to Imprison the King, to raise the Subjects against the King; these have been settled by several Resolutions to be within that Statute, and Evidences of a design to Kill the King.

What is Evi-  
dence of a de-  
sign to Kill  
the King.

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*Lord Russel.* One Witness will not Convict a Man.

*L. C. J.* It has been Resolv'd, that the two Witnesses the Statute requires, are not to the same individual Act, but to the same Treason: If they be several Acts declaring the same Treason, and one Witness to each of them, they have been reckoned two Witnesses within the Stat. of *Ed.* 6.

Two Witnes-  
ses to the  
same Species  
of Treason  
sufficient, tho'  
they don't  
speak to the  
same Fact.

Lord

## The T R T A L of

Lord *Ruffel*. It is very hard a Man must lose his Life upon Hearsay. Col. *Rumsey* says he brought a Message, which I will swear I never heard or knew of; he does not say he spake to me, or I gave any Answer, Mr. *Sheppard* remembers no such thing, he was gone to and again, here is but one Witness, and Seven Months ago.

The Statute of 25 *Edw. III.* was read.

Lord *Ruffel*. It is a Point of Law, and I desire Counsel.

Where Counsel are allowed to argue a Point of Law, the Fact must be admitted.

*L. C. J.* If your Counsel be heard, they must be heard to this; That taking it that my Lord *Ruffel* has consulted in this manner for the Raising of Forces within this Kingdom, and making an Insurrection, as Col. *Rumsey* and my Lord *Howard* deposed, Whether this be Treason.

Lord *Ruffel*. The Point methinks should be quite otherwise, That there should be two Witnesses to one Thing at the same Time.

*Att. Gen.* In my Lord *Stafford's* Case there was but one Witness to one Act in *England*, and another to another in *France*.

Lord *Ruffel*. It was to the same Point: It appears by the Statute, that Levying War is Treason, but a Conspiracy to Levy War is no Treason; if nothing be done 'tis not Levying War within the Statute. There must be manifest Proof of the Matter of Fact, not by Inference.

*Att. Gen.* That is taken out of my Lord *Coke*. Levying War is a distinct Branch of the Statute, and my Lord *Coke* explains himself afterwards, and says, It is an Assuming of Royal Power to Raise War for particular Purposes.

Lord *Ruffel*. Collonel *Rumsey*, Can you swear positively I heard the Message, and gave any Answer to it?

Col. *Rumsey*. When I came they were standing at the Fire-Side; but they all came from the Fire-Side to hear what I said.

Lord *Ruffel*. The Duke of *Monmouth* and I came together, and you were standing at the Chimney when I came in: My Lord *Howard* has made a long Narrative of what he knew, and 'tis but very lately he did declare and protest to several People, that

that he knew nothing against me, nor of any Plot I could in the least be question'd for.

My Lord *Anglesey* stood up.

Lord *Anglesey*. Hearing my Lord *Bedford* was in some Distress concerning the Affliction of his Son, I went to give him a Visit, my Lord *Howard* came in and began to comfort my Lord; says he, You are happy in having a Wise Son, and a worthy Person, one that can never sure be in such a Plot as this, or suspected for it: I know nothing against him, or any body else, of such a barbarous Design, and therefore your Lordship may be comforted in it; And proceeded to give an Account of what he heard my Lady *Chaworth* say to the same Effect.

Lord *Anglesey* and other Witnesses appear for the Prisoner, and depose, that they heard my Lord *Howard* affirm he knew nothing of the Plot.

*Serj. Jefferies*. As the Court will not let us offer Hearings, so neither must we that are for the King permit it.

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Then Mr. *Howard* stood up.

Mr. *Howard*. I applied my self to my Lord *Howard* in this present Issue, on the breaking out of this Plot. He took it upon his Honour, his Faith, and as much as if he had taken an Oath before a Magistrate, That he knew nothing of any Man concern'd in this Business, and particularly of my Lord *Russel*, whom he vindicated with all the Honour in the World: He added, He thought my Lord *Russel* did not only unjustly suffer, but he took God and Men to Witness, he thought him the worthiest Person in the World.

Dr. *Burnet* call'd.

Dr. *Burnet*. My Lord *Howard* was with me the Night after the Plot broke out, and he did then as he had done before, with Hands and Eyes lifted up to Heaven, say, he knew nothing of any Plot, nor believ'd any, and treated it with great Scorn and Contempt.

Lord *Cavendish* call'd.

Lord *Cavendish*. I had the Honour to be acquainted with my Lord *Russel* a long Time; I always thought him a Man of Great Honour, and too Prudent and Wary a Man to be concerned in so desperate a Design, and has express'd himself to have so ill an Opinion of Col. *Rumsey*, that it

is

is not likely he would intrust him with such a Secret.

Dr. Tillotson call'd.

Dr. Tillotson. I have been many Years acquainted with my Lord *Russel*, and always judg'd him a Person of great Virtue and Integrity, and by all the Discourse I ever had with him, took him to be a Person very far from any such wicked Design.

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Dr. Burnet testified, He always express'd himself against all Risings, &c.

Dr. Cox testified, He had heard my Lord *Russel* express himself against all kind of Risings, and thought it the greatest Folly and Madnes, till Things should come in Parliamentary Way: And had heard him say of my Lord *Howard*, He was a Man of Luxuriant Parts, but had the Luck not to be trusted by either Party.

Duke of *Somerset* gave my Lord *Russel* a Character for his Royalty, &c.

Foreman of the Jury. The Jury desire to ask my Lord *Howard* what Answer he makes to what my Lord *Anglesey* testified.

Lord Howard's  
Reply to the  
Prisoner's  
Witnesses.

Lord *Howard*. I do confess I did frequently say there was nothing of Truth in this, I was at that Time to out-face the Thing both for my self and my Party, and I did not intend to come into this Place and act this Part. My Lord, I do think the Religion of an Oath is not tyed to a Place, but receives its Obligation from the Appeal we make to God; And if I call'd God and Angels to Witness to a Falsehood, I ought not to be believed now; but your Lordship knows that every Man that was committed for *Murdering the King*: Now I laid hold on this (for I was to carry my Knife close between the Paring and the Apple,) and I did say, *If I were an Enemy to my Lord Russel and the Duke of Momouth, and were call'd to be a Witness, I must have declared, in the Presence of God and Man, that I did not believe either of them had any Design to Murder the King.* I have said this, because I would not walk under the Character of a Person that would be perjur'd at the Expence of so noble a Person's Life and my own Soul.

Lord



Lord Clifford and Mr. Levison Gore were call'd, and gave my Lord Russel a Character as to his Loyalty, &c.

Mr. Spencer and Dr. Fitz-Williams appear'd, and spoke to his Character. Page 153.

Lord Russel. I declare to your Lordship, I am one that have always had a Heart sincerely Loyal and Affectionate to the King and Government, the best Government in the World, I pray as sincerely for the King's happy and long Life, as any Man alive, and for me to go about to Raise a Rebellion, which I look'd upon as so wicked and unpracticable, is unlikely: I was always for the Government, I never desir'd any thing to be Redress'd but in a Parliamentary and Legal Way. Gentlemen, I am now in your Hands Eternally, my Honour, my Life and All; and I hope the Heats and Animositities that are amongst you, will not so byas you, as to make you in the least inclin'd to find an Innocent Man Guilty: I call to Witness Heaven and Earth, I never had a Design against the King's Life in my Life, nor never shall have; I think there is nothing prov'd against me at all. I am in your Hands, God direct you.

Lord Russel makes Prote-  
stations of his  
Innocence, and  
so concludes  
his Defence.

*Sol. Gen.* The Prisoner at the Bar stands Indicted for High Treason, in Conspiring the Death of the King. The Overt-Act that is laid to prove that Conspiracy and Imagination, is the Assembling in Council to Raise Arms against the King, and Raise a Rebellion here. *Then he goes on and repeats the foregoing Evidence.* Now my Lord Russel insists, that admitting these Facts be prov'd upon him, they amount to no more than a Conspiracy to Levy War, and that is not Treason within the Statute of the 25th of *Edw. III.* And if it be only within the Statute of the 13th of this King, then 'tis out of Time; that directs the Prosecution to be within six Months. The Statute of the 13th of this King I will not now insist upon, tho' the Clause that says the Prosecution shall be within six Months, does not refer to Treason, but only to the other Offences that are highly punishable by that Statute: *Here he repeated the Proviso in that Statute.* But this is High Treason within

Mr. Finch his  
Reply to my  
Lord Russel's  
Defence.

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the 25th of *Edw. III.* To Conspire to Levy War is an Overt-Act to testify the Design of the Death of the King. And the Error of my Lord Coke hath possibly led my Lord into this Mistake: But this hath been determin'd; it was determin'd by all the Judges, in the Case of my Lord *Cobham*, 1 *Jac. I.* A Conspiracy to Levy War against the King's Person, (as this was a Conspiracy to Seize the Guards,) What does that tend to but to Seize the King? and that hath always been taken to be High Treason. But there are some Things call'd Levying War in Law, that are not so directly against the King, as if a Number of Men go about to Levy Men to Overthrow all Inclosures, this, by the Generality of the Intent, and because of the Consequences, is accounted Levying War against the King: A Conspiracy therefore to Levy such a War, which by Construction only is against the King, perhaps may not be such an Overt-Act as to testify the Imagination of the Death of the King; but other Conspiracies to Levy War against the King, have always been so taken. It is the Resolution of all the Judges in my Lord *Dyer's* Reports, (the Case of *Dr. Story*,) A Conspiracy to invite a Foreign Prince to make an Invasion, tho' no Invasion follow, is an Overt-Act to prove the Conspiring the Death of the King. It is acknowledg'd by my Lord *Coke* himself, That a Conspiracy to invite a Foreign Prince to invade the Kingdom, is a Conspiracy against the Life of the King: He says indeed, an Overt-Act of one Treason cannot be an Overt-Act of another Treason; but constant Practice is against him in that: For what is more common, than to Indict a Man for Imagining the Death of the King, and to Assign the Overt-Act in a Conspiracy to Raise Arms against the King. It was resolv'd by all the Judges in Sir *H. Vane's* Case: It is agreed, That to take the King Prisoner, to Seize the King, that is a Compassing the Death of the King; and to sit in Council to Conspire to effect that, that is an Overt-Act of the Imagination of the Death of the King: Now no Man can distinguish this Case from that. The Consultation was to Seize upon the King's Guards, that

that could have no other Stop, but to Seize upon the King's Person, and bring him into their Power. As to the Killing the King, I am apt to think that was below the Honour of the Prisoner at the Bar; but this is equally Treason, If they design'd only to bring the King into their Power till he had consented to such Things as should be mov'd in Parliament, it is equally Treason, as if they had agreed directly to Assassinate him.

*Serj. Jefferies.* I will take Notice only of one Thing that that Noble Person at the Bar seems to object, viz. That it is necessary there should be two Witnesses to the self same Fact at the self same Time: Gentlemen, There is not only the Judgment of all the Judges of *England*, but the Judgment of the Lords in Parliament, when, I doubt not, the Prisoner at the Bar did attend in the Case of my Lord *Stafford*, wherein one Witness gave an Account of a Conspiracy in *England*, Turbivile of another in *France*; and by the Opinion of all my Lords the Judges approv'd in Parliament, that was enough, and he was Convicted.

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Serj. Jefferies  
Reply to the  
Lord Russel's  
Defence.

*The Lord Chief Justice having repeated the most material Parts of the Evidence, He goes on:* " Now the Question before you will be, Whether upon this whole Matter you do believe my Lord *Russel* had any Design upon the King's Life: 'Tis used and given you by the King's Counsel, as an Evidence of this, That he did conspire to Raise an Insurrection and Rebellion within this Nation, and to Surprize the King's Guards, which, say they, can have no other End but to Seize and Destroy the King; and 'tis a great Evidence (if my Lord *Russel* did design to Seize the King's Guards, and make an Insurrection in the Kingdom) of a Design for to Surprize the King's Person. You have not Evidence in this Case, as there was in the other Matter that was Try'd in the Morning or Yesterday against the Conspirators to Kill the King at the *Rye*: There was a direct Evidence of a Consult to Kill the King, that is not given you in this Case; this is an Act of Contriving Rebellion and Insurrection within the Kingdom; and to Seize his Guards,

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Lord Chief  
Justice's Direction to the  
Jury.

" which is urg'd as an Evidence, and surely is in  
 " it self an Evidence, to Seize and Destroy the  
 " King.

" If you believe the Prisoner at the Bar to have  
 " Conspir'd the Death of the King, and in order  
 " to that, to have had these Consults that these  
 " Witnesses speak of, then you must find him  
 " Guilty of this Treason that is laid to his  
 " Charge.

The Jury find  
 him Guilty.

Then the Court Adjourn'd till Four a-Clock in  
 the Afternoon, when the Jury brought the Lord  
*Ruffel* in Guilty of the said High Treason.

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*The Arraignment of JOHN ROUSE and  
 WILLIAM BLAGUE, 12 July, 35 Car.  
 II. An. Dom. 1683.*

The Indict-  
 ment.

" T H E Indictment sets forth, That the said  
 " *John Rouse* and *William Blague*; the Se-  
 " cond Day of *March*, in the 35th Year of King  
 " *Charles II.* and divers other Days and Times, as  
 " well before, as after, at the Parish and Ward of  
 " *St. Michael Bassishaw, London*, did conspire,  
 " compass and intend the Death and Destruction  
 " of His Majesty, and the Subversion of the Go-  
 " vernment; and to that End, did meet and con-  
 " sult, with divers other Traitors to the Jurors  
 " unknown, concerning the Taking and Seizing  
 " of the Tower of *London*; and the said *John*  
 " *Rouse* and *William Blague* did then and there  
 " promise to procure and prepare Arms, viz.  
 " Blunderbusses, Carbines, and Pistols for that  
 " Purpose, against the Duty of their Allegiance,  
 " the King's Peace, &c.

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After their Arraignment the Court adjourn'd;  
 and on *Friday, July 13.* the Prisoners were again  
 brought to the Bar: *Rouse* complain'd, that he had  
 Notice of Tryal but on *Monday* last, and no body  
 was permitted to come to him till *Wednesday*  
 Night, so that he had not been able to get his Wit-  
 nesses ready.

L. C. J.



*L. C. J.* You can demand no Time to prepare for Tryal; they that will commit Crimes must be ready to answer for them.

*Rouse.* My Lord, I only beg a little Time; I thank God I am Innocent.

*L. C. J.* We can't give you further Time, unless the King pleases; we are bound to try those he brings before us. Then Captain *Blague* was taken away; and after *Rouse* had challeng'd several Persons, a Jury was sworn.

The King's Council having open'd the Indictment and the Nature of their Evidence,

*Thomas Leigh* was Sworn.

*Rouse.* My Lord, He is one whom two Persons have sworn before he was taken, that he had a Hand in the Plot, and I suppose without a Pardon he is no Evidence.

*Serj. Jefferies.* Come tell us all you know.

*Leigh.* Mr. *Rouse* in June last took me to the King's Head Tavern in *Swithin's Alley*, where there was a Club of Men that were in the Conspiracy, and after some Time Mr. *Goodenough* came in: *Goodenough* acquainted me, there was an Apprehension our Rights and Privileges were invaded, and it was Time to look to our selves, for Popery and Arbitrary Power was design'd, and desir'd to know if I would engage in that Affair to prevent it; he told me also the City of *London* and *Middlesex* was divided into Twenty Parts, and ask'd me to engage in one Part, I said I would get a Part where my Acquaintance was, and told Mr. *Rouse* and Mr. *Goodenough* what Men I had spoke to. Mr. *Goodenough* told me also, the Design was to set up the Duke of *Monmouth*, and Kill the King and Duke of *York*, as also the Lord Mayor and Aldermen, and their Houses were to be plunder'd: I acquainted Mr. *Rouse* with this Business, but he knew of it before, and told me he could provide Arms for an Hundred Men, and said nothing was to be done unless the King was Seiz'd; for they remembred Forty One, when the King went and set up his Standard; therefore says he, We will Seize them that they shall not set up their Standard, but he was not for Shedding their Blood: Mr. *Rouse* said,

*Sir Edm. Saunders.*

No Time for Tryal can be insisted on.

*Rouse* try'd by himself.

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One sworn to be in the same Conspiracy a good Evidence.

*Leigh's* Evidence concerning the dividing the City into twenty Parts, and the Design of Seizing the Tower, and Setting up the Duke of *Monmouth*.

It would be a very convenient Thing to have a Golden Ball play'd for upon *Black-Heath*, and he would engage Ten Sea Captains to manage that Affair, and he that won the Ball should take it. But when that was done, every Captain should take his Party, and go with Long-Boats and Arms and Seize the Tower. Mr. *Rouse* told me the Charge of the Golden Ball would be Ten or a Dozen Pounds, and *Goodenough* said, If it was Forty he would be at the Charge of it all: And several such Discourses Mr. *Rouse* has in my Hearing spoke to several Men at the *King's Head Tavern*. After I was sworn against, Mr. *Rouse* told me I should lie at his House, and he cut off my Hair and got me a Peruke; Mr. *Rouse* and I went several Times to view the Tower, and took Mate *Lee* with us: Mate *Lee* directed us to *Traitors-Bridge*, and said, that was an easy Place, and he would undertake to do it with an Hundred Men, so they had but Hand-Grenadoes. Mr. *Rouse* told me also, he had been at *Wapping*, and spoke with some Sea Captains, and they were ready to undertake the Work. When I was at Mr. *Rouse's* House, after I was sworn against, Mr. *Rouse* bid me not be discourag'd; and Mr. *Nelthrop* and Mr. *Goodenough* directed me, whenever I was taken, to deny all, and it could not touch my Life. I lay well, and eat well, while I was at Mr. *Rouse's*, and we had several Meetings afterwards at Captain *Blague's* and elsewhere. They never agreed on a Way or Method of Killing the King, but they told me they had One Thousand Horse ready in the Country, and Five Hundred in the Town, and that the King was to be kill'd coming from *Windsor*; they contriv'd to send their Arms in Trunks to private Houses, that they might not be suspected; and there they were to Arm themselves in the Night: and some Brick Men were to go to *Windsor* to know when the King came, and give Information, and so they were to set upon him in some convenient Place; and the King and the Duke were both to be taken off. And Mr. *Rouse* said, *Take them off, and then no Man can have Commission to Fight for them.* And he said, the King had been sworn in *France* and *Spain*

*Spain*, to bring in Popery and Arbitrary Power in so many Years, and therefore it was no Sin to take him off; and this, he said, he had under his own Hand.

Suggestion of the Plotters, that King Charles was to bring in Popery.

*Rouse*. I ask him whether ever I spake to him of any Design against the King and Government, and what Place it was in? And whether he did not begin with me?

*Leigh*. I can't be positive whether I came to Mr. *Rouse*, or he to me; or whither he discours'd it first to me, or I to him. But when that Point was discours'd, he was very zealous to get Ten Captains, and that the Ball might be play'd for, and the Tower taken.

*Rouse*. Did ever Mr. *Goodenough*, and You and I, meet upon such an Account.

Mr. *Leigh*. Yes, at the King's Head Tavern.

*Mate Lee* Sworn.

*Lee*. I went with Mr. *Rouse* to the King's Head Tavern by the *Exchange*, and there he ask'd me, if I could not get some Seamen fit to make Commanders of Ships? I did not well understand his Meaning then, and he appointed me to meet him and Mr. *Leigh*, at the *Blew Anchor* at *Wapping Dock*, where he renew'd the same Question. I ask'd him what he intended by Commanders of Ships, and where he would have those Ships? He answer'd, some of the King's Men of War, that lay at *Debtford* and *Woolwich*, to make Guard-Ships. Says I, What will you do if you have no Powder and Shot? If you could take the Tower, then you might provide them with every Thing. Says Mr. *Rouse*, we must secure the Tower and *Whitehall* both, or we can do nothing. Says I, Where is your Oath of Allegiance, then, to the King? He answer'd, We will secure the King, that he come to no Damage, and he shall remain King still. I met him afterwards, and we discours'd to the same Effect. If Mr. *Rouse* has any Thing to Object against what I say, I desire to hear it? I speak nothing but the Truth.

*Mate Lee's Evidence concerning the Design of taking the Tower.*

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*Corbin's Evidence, that the Prisoner said, The King had forfeited his Right to the Crown.*

Mr. *Thomas Corbin* was Sworn.

Mr. *Corbin*. Some few Days before the Members for the City of *London*, went to the Parliament

## The T R T E A L of

ment at Oxford, Mr. Rouse said, he did foresee it would be a very short Sessions; and that these frequent Prorogations and Dissolutions of the Parliament, would not avail; for whatever the King has, the Parliament gave him, and may take away when they please: One bid him have a Care what he said, and he reply'd, *The King had forfeited his Crown, and had no more Right to it than he had.* This is the same Evidence I gave in Court, in the Year 1681.

William Richardson was sworn, who was at the taking of Mr. Rouse, and he depos'd, that when they took him, he affirm'd his Name was Johnson.

Rouse's Defence.

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Rouse. Leigh came to me several Times about that Business, and I opposed it. The first Place I saw him in, was the King's Head in Swithins Alley: He ask'd me whether I was willing to oppose a Foreign Invasion? I ask'd him what he meant, and he told me at length, That our Rights and Liberties were Invaded; and that they only made this Pretence of a Foreign Invasion to hook People in: And ask'd me, If I did not know the Persons who were engag'd in the Design? Whereupon, I concluded he was of the Cabal that met together upon this Design: And I am pretty Confident there was such a Hellish Design, though, I thank God, I had no Hand in it. He made me acquainted with the Design of taking the Tower, the Aldermen, &c. And said they did not want Money, for Goodenough had assur'd him there was 40000 l.

He is confident there was such a Plot, but he had no hand in it.

L. C. J. You Invert all his Discourse; he hath sworn it against you, have you any Evidence? And here is Mate Lee a very shrew'd Evidence against you.

Rouse. My Lord, he hath turn'd it upon me: I have nothing to say against Mate Lee; but I having a Design to discover the whole Thing, and having so much out of Leigh the Dier, I would have known the bottom of it.

Justice Withins. How came you not to tell the King one Word of all this, till after you was taken?

Rouse. I have told it since I was taken.

Sol.



*Sol. Gen.* Pray, when you had got to the bottom of all this (as you call it) why did you deny your Name?

*Rouse.* I did not know they were Officers; and I did not think there was any Obligation upon me to tell every Man my Name.

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*L. C. J. To Leigh.* Did you never meet *Rouse* with any Company upon any of these Treasonable Designs you have spoken of?

*Leigh.* We never discours'd the Matter jointly, but singly with one Man. *Mr. Rouse* and *Mr. Good-enough* went into a Room apart, and discours'd this Matter, I believe half an Hour.

*L. C. J.* How do you know what Discourse they had?

*Leigh.* I know only what *Mr. Rouse* told me: We went from the *King's Head* Tavern, there being Company we did not like; though we discours'd there of *Hay-Making*, and getting Men to help the Country People.

*L. C. J.* What did you mean by that?

*Leigh.* That was to get Men for this Business; the seizing the Tower. But he told me, all Things must be done together; the King and the Duke must be seiz'd, and this was the principal Work.

*Rouse.* It never enter'd into my Heart: I desire to ask him, when he was told he was sworn against, what he said?

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*Leigh.* When I heard *Mr. Keeling* had sworn against me, I said, if I did light of *Keeling*, I would kill him.

*L. C. J.* Pray, What was your Reason for putting *Mate Lee* upon the inquiring out Men to make Masters of Ships?

*Rouse.* To get to the bottom of the Design that so his Majesty might come to no Damage.

*Serj. Jefferies.* He hath confess'd Treason enough.

The Lord Chief Justice repeated the Substance He is Convicted of the Evidence; and the Jury immediately found Aed. the Prisoner Guilty.

Page 167. *The Tryal of Capt. WILLIAM BLAGUE, on Friday, 13 July, 35 Car. II. 1683.*

*Capt. Blague making no Challenge, the same Jury serv'd, as at Mr. Rouse's Tryal.*

Mr. Leigh was call'd.

Leigh's Evidence concerning the Design of seizing the Tower.

L. C. J. **W**HAT do you know of any Treasonable Practises of the Prisoner's?

*Leigh.* Capt. *Blague* and Mr. *Rouse* were frequently at the Tavern; many Times, I presume, about Business, and sometimes there were Discourses to carry on this Conspiracy. Mr. *Rouse* told me he had acquainted Capt. *Blague* with it, about getting Ten Sea Captains; and Capt. *Blague* said, They had better ingage one or two Ships, to shoot Mortar Pieces into the Tower, which would presently destroy it. And discoursing with Capt. *Blague* about that Affair, he told me he would be ready within a Fortnight, or something more; and he had an intention to lay in about Twentyfour Guns in his own Ship that he had bought; and lay it on the Southwark Side, against the Tower. He would venture his Ship, but they must see they were provided with Money for the Seamen. I acquainted Mr. *Goodenough* with this, and he desir'd to speak with Capt. *Blague*; Whereupon, Capt. *Blague* and I took Coach at Stocks-Market, and went to the King's Head Tavern at Chancery Lane End; where we met Mr. *Richard Goodenough*, and Mr. *Francis Goodenough*. Capt. *Blague* ask'd what Money they had provided: They said, about Forty Thousand Pound. Says Capt. *Blague*, The Seamen will swallow that up immediately. And they discoursed of the Means to seize the Tower: And Capt. *Blague* said, he would venture his own Ship, and provide Two Hundred Men. Mr. *Goodenough* said, There would be more Money provided at any Time; and after we had drank a Glass or two of Wine, we parted. I met Capt. *Blague* again, and he bid me, for God's sake, not to discourse before his Mate (such a one) but said, his Mate *Lee* was a very

a very honest Fellow. And *Blague* said, He would undertake, Once in Twenty Times, to dismount them six Guns that face *Surrey Side*; which I understood, were then about *Traytors Bridge*: And I was desir'd to be frequently with Capt. *Blague* for the managing this Affair of the *Tower*. The Meeting I mention'd, was about the latter end of *May*, or the beginning of *June*.

Mate *Lee* was call'd.

Mate *Lee*. The first Discourse that I ever heard of this, was as Capt. *Blague* and I were Riding in a Coach: Says Capt. *Blague*, One of these Days we shall have a Ball to toss. I did not know the meaning of this Ball, till afterwards; Mr. *Rouse* and Mr. *Leigh*, and I, came together; and he told me of tossing a Ball upon *Black-Heath*, and then I began to understand it. And once, as Capt. *Blague* and I were walking about the *Tower*, and discoursing about this, I held it to be the best way to Scale the *Tower*: Says Capt. *Blague*, The best way is to shoot Mortar Pieces on *Southwark Side*.

Mate *Lee*'s Evidence.

L. C. J. How came you to discourse with him concerning the best way of taking the *Tower*?

Mate *Lee*. Mr. *Rouse*, Mr. *Leigh*, and I, and Capt. *Blague*, had been together, and discours'd about taking the *Tower*: I approv'd of Scaling Ladders and Hand Granadoes, as the best way; and Capt. *Blague*'s Way was with Mortar Pieces on the *Southwark Side*.

L. C. J. What was your Business with Capt. *Blague*?

Mate *Lee*. I was to be his Mate, and was Conversant with him at the *Exchange*, the *Coffee-House*, and the *King's Head Tavern*, where we had Discourse about these Things.

Capt. *Blague*. Having occasion to take up Two or Three Hundred Pound, and meeting Mr. *Rouse* upon the *Change*, whom I knew to be a *Broker*, I did employ him to procure it for me, though I had not seen him before for Sixteen or Seventeen Years; and I went often to the *King's Head*, and the *Sun Tavern*, about this Business: Where there us'd to be several People with him I had never seen before; and in that Time, Mr. *Rouse* brought me

*Blague*'s Defence.

Page 169. me acquainted with *Goodenough*, but I never discours'd with Mr. *Goodenough* concerning any Publick Affairs! As to the Business of the *Tower*, that Mr. *Lee* speaks of, I remember, as we came up by Water, I said to the Waterman, This Place is not well fortified, and if any Occasion should happen, this Place lies in more Peril and Jeopardy than any Place of the *Tower*; and so it does: And I told Mr. *Lee*, it was pity that Place was not better fortified. And as to what Mr. *Lee* says, of putting Two hundred Men into my poor *Pink*, it will not stow an Hundred. Let any Man look upon her, and see if that Ship be fit to take in Two Hundred Men. And whereas, they say, I had Arms, I bought the Ship and Arms together. As to the Bank of Money they mention, I never discours'd of it. And as to the Ball my Mate speaks of, I know not what it means.

L. C. J. Mr. *Leigh*, Did Capt. *Blague* undertake to raise Men, and to assist, with his Ship, in taking the *Tower*?

Page 170. Mr. *Leigh*. He told me he would do so, and that he would have Twentyfour Guns.

Capt. *Blague*. Ask him, Whether there were any Projections or Provisions made for the taking of it? And whether or no, there was any Resolution made, that the *Tower* should be taken?

Page 171. Mate *Lee*. There was nothing of Men or Guns provided, that I did know or hear of.

Jury. My Lord, We desire to have the Witness ask'd, Whether the Captain knew he went to View the *Tower*?

Mate *Lee*, My Lord, I can't be positive as to that; but some time after we met the Captain, and told him we had been to View the *Tower*; I don't remember what he said upon it.

Sir *James Butler*. Did you first speak to the Captain about the *Tower*, or he to you?

Mate *Lee*. I don't know but it might be my Motion to him.

Page 172. Capt. *Blague* call'd several Witnesses, to shew that he had not Ship'd, or spoke to more than five or six People, towards Manning his Ship; and that she was not in a Condition for Service, three Weeks



Weeks before; that she had not above Fourteen Guns, and was about One hundred and Fifty Tuns, and that they were bound for *New-York, &c.*

The Lord Chief Justice summ'd up the Evidence, and directed the Jury to consider, "Whether the Discourse between Mate *Lee* and the Captain, about Taking the Tower, were really in order to the Taking of it, or only in a Sportive Way to try one another's Judgments; for altho' the first Witness spoke pretty positively, the other gave but a dark Evidence, and that there ought to be Two Witnesses in Treason, and without Two Witnesses a Man could not be found Guilty."

Two Witnesses necessary in Treason.

Page 173.

Then the Jury withdrew, and in a short Time return'd and brought the Prisoner in *Not Guilty*. The Prisoner is acquitted.

Saturday July 14, the Lord RUSSEL was brought to the Bar.

IT being demanded of my Lord *Russel*, what he could say, why Judgment should not pass upon him according to Law? He desir'd the Indictment might be read in *English*; and the Clerk having read to the Words of *Conspiring the King's Death*, he said, he thought he had not been charg'd with Conspiring the Death of the King; for the Witnesses had only sworn a Conspiracy to Levy War, and therefore, he thought, Judgment ought not to pass upon him, for *Conspiring the Death of the King*.

My Lord *Russel* call'd to his Sentence.

Objects the Evidence did not prove the Facts laid in the Indictment.

Mr. Recorder. That was an Exception proper to be made before Verdict, and, I think, you did make it. Whether the Evidence does amount to prove the Charge, is proper to be observ'd to the Jury; for if the Evidence come short of the Indictment, they can't find it to be a true Charge: But when the Jury has found it, their Verdict does pass for Truth.

The Court can't judge of that, the Jury having found them.

Lord *Russel*. I think it very hard I must be Condemn'd upon a Point that there was not one Thing of it sworn; therefore, I think, I may very legally demand Arrest of Judgment.

Mr.

Mr. Recorder. I hope your Lordship will consider 'tis not the Court can give a Verdict, it must be the Jury: I believe there is no Body in the Court does delight in giving such Judgments, especially against your Lordship. The Verdict is found, and the King's Attorney General, on behalf of the King, does demand it.

Sentence  
pass'd on the  
Lord Russell.

Then Proclamation was made for Silence, and after a short Preface, the Recorder pronounced Sentence upon the Lord Russell, as usual, in Cases of High-Treason.

Sentence  
pass'd on Walcott, Hone, and Rouse.

Page 174.

Then it was demanded of Walcott, Hone, and Rouse, respectively, if they had any Thing to say why Judgment should not be pronounc'd against them? Rouse observ'd, that the Words mentioned in his Indictment, were laid to have been spoken the 2d of March, and by the Evidence they appear'd to be spoken in June; and therefore thought it strange the Jury should find it. But none of them offering any Thing Material, the same Sentence was pass'd upon them, as had been against the Lord Russell.

Page 204.

### *The Arraignment of Algernon Sidney, Esq; 7 Nov. 35 Car. II. A. D. 1683.*

Algernon Sidney, Esq; was by Habeas Corpus brought to the Bar of the Court of King's-Bench. and the Clark of the Crown having read the Return, Mr. Attorney General inform'd the Court there was an Indictment against the Prisoner, and pray'd he might be Charg'd with it.

The Indictment.

“ THE Indictment set forth, That the said  
“ *Algernon Sidney*, as a false Traytor to  
“ his Prince, on the 30th of June, in the 35. Year  
“ of the King, and divers other Days and Times,  
“ as well before as after, in the Parish of St.  
“ *Giles's* in the *Fields*, in the County of *Middlesex*;  
“ Traiterously did Conspire the Death of  
“ of the King, and to levy War within this  
“ Kingdom, and to alter and utterly, Subvert  
“ the ancient Government thereof; and so that  
“ End

“ End, did then, and there, and divers other  
 “ Days and Times, as well before as after,  
 “ traiterously and advisedly Assemble, Meet, and  
 “ Consult with divers other Traytors (to the  
 “ Jurors unknown) how to Execute and Ful-  
 “ fil the aforesaid Treasons; and did send one  
 “ Aaron Smith into Scotland to excite some ill  
 “ affected Persons there to come into this King-  
 “ dom, and to Consult with the said *Algernon*  
 “ *Sidney* and other Traytors of, and concerning  
 “ Assistance from the Kingdom of Scotland, to  
 “ carry on those Designs. And the Indictment  
 “ further sets forth, That in Order to perswade  
 “ the People of England, it was lawful to Raise  
 “ Rebellion. The said *Algernon Sidney* did  
 “ Cause a Seditious Libel to be Written, where-  
 “ in are these English Words; *The Power Ori-*  
 “ *ginally in the People of England is delegated*  
 “ *to the Parliament, The King is Subject to the*  
 “ *Law of God, as he is a Man: To the People*  
 “ *that make him King, inasmuch as he is a King.*  
 “ *Law sets a Measure unto that Subjection, &c.*  
 “ against the Duty of his Allegiance, the King’s  
 “ Peace, &c.

*Col. Sidney.* My Lord, I find here an heap of Crimes put together, distinct in Nature one from another, and distinguish’d by Law; and I conceive the Indictment it self is thereupon Void, and I cannot be Impeach’d upon it.

Page 205.

*L. C. J.* You must Plead or Demur.

He must ei-  
ther Plead or  
Demur.

*Col. Sidney.* My Lord, if I put in Exceptions to the Bill, I don’t Plead till those Exceptions are Over-ruled. This was in the Case of Sir *Henry Vane*: My Lord, I desire you to accept of this, (*shewing a Parchment.*)

*L. C. J.* What is it? Put in what Plea you shall be advised: But if you put in a special Plea, and Mr. *Attorney* Demurs, you may have Judgment of Death, if your Plea be not Good, for you waive the Fact.

Sir George Jef-  
series.

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*Justice Withins.* If you Demur, and shew what your Causes are, we will assign you Council.

*Col. Sidney.* Then pray my Lord, will you tell me this; is it true that a Man, how Vicious  
 forever

soever an Indictment is, must answer a Demur to it.

*L. C. J.* He must either Answer or Demur.

*Col. Sidney.* I desire this may be Read, (*shewing the Parchment.*)

*L. C. J.* It shall not be Read, unless you put it in as a Plea.

*Col. Sidney.* I only give it as Exceptions to the Bill.

*L. C. J.* You must Plead as other People, or we will pronounce Sentence.

A Fortnights  
Time allow'd  
him for Tryal.

Then the Prisoner pleaded *Not-Guilty*; and desir'd a Fortnights Time to prepare for his Tryal, which was granted. He also desir'd Council, and a Copy of his Indictment; but they were deny'd him: But at his Request, the Indictment was Read again in *Latin*.

Page 207. *The Tryal of ALGERNON SIDNEY, Esq;*  
21 Nov. 35 Car. II. 1683.

**A**lgermon Sidney, Esq; was brought to the Bar of the Court of *King-Bench*, by *Habeas Corpus*, and pray'd a Copy of his Indictment, to which he apprehended himself to be Entitled by the 46 Ed. III. which says, That all People shall have a Copy of every Record. And urg'd that was not deny'd to my Lord *Strafford*, *Stafford*, or the *Popish Lords*.

Sir George Jeffries.

*L. C. J.* You had the Indictment read to you in *Latin*, which was denied in the Case of Sir *Henry Vane*; and there is a late Case known to most Persons here. By the Opinion of all the Judges of *England*, a Copy of the Indictment was deny'd to my Lord *Russel*. We must not spend our Time in Discourses to Captivate the People.

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The Clark of the *Crown* call'd the Jury, and after several Challenges, a Jury was Sworn.

The Counsel  
check'd for  
Whispering  
the Prisoner.

*L. C. J.* Look you Gentlemen of the Jury, there are some Gentlemen at the Bar, as we are inform'd are apt to Whisper the Jury; 'tis no part of their Duty: Nay, 'tis against their Duty; and I expect, if you hear the Counsel say any Thing you



you will inform the Court: Let us have no Remarks, but a fair Tryal in God's Name.

Then the King's Council having opened the Indictment, and the Nature of their Evidence, Mr. *West* was call'd.

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*Col. Sidney.* Mr. *West* has confess'd many Treasons: I desire to know whether he be Pardon'd.

*L. C. J.* I don't know that, but I know no legal Objection against him. Swear him.

*Mr. North.* Pray give an Account what you know of an Insurrection intended in *England*?

*Col. Sidney.* What he knows concerning me; is it ordinary that he should say any Thing, unless it be to me, and my Indictment.

*L. C. J.* You remember in all the Tryals about the late *Popish Plot*, how there was first a general Account given of the Plot, in *Coleman's* Tryal, and so in *Plunkets*, and others; I don't doubt but you remember it: And Sir *William Jones*, against whose Judgment I believe you won't Object, was Attorney at that Time.

*Mr. West* depos'd, That *Capt. Walcott* told him an Insurrection was design'd in *November*. That afterwards he told him that Design was dis-  
 appointed. Hear-say Evidence admitted.

That *Col. Rumsey* told him of some Lords and Gentlemen that design'd an Insurrection; among whom, the Prisoner was one.

That *Mr. Nelthrop* and *Ferguson* told him, the Prisoner had sent *Aaron Smith* into *Scotland*, and given him Money for his Charges; and had sent Letters to some *Scotch* Gentlemen about the Insurrection; that *Smith* was return'd, and some *Scotch* Gentlemen with him; and that the *Scots* propos'd, if they might have 30000 *l.* to make an Insurrection without the Concurrence of *England*. That Arms were ready, and the Lord *Argyle* would go into *Scotland*, and Head the *Scots*. That several Towns in *England* were fix'd upon, where the Rising should begin; and there were some Debates, whether they should begin at *London*, or in the other Places first. That the Prisoner, and Major *Wildman*, were some occasion of the Disappointment; because they could not agree upon the Declaration

The *Scotch* invited into the Conspiracy.

Page 210.

Disagree with  
the English in  
their Schemes  
of Govern-  
ment.

to be made upon the Insurrection. The *English* were for a *Common-Wealth*; but the *Scotch* said, though it might come to that, their Noblemen would not agree to it at present. As to the Prisoner at the Bar, he knew nothing, and did never speak with him, till since Discovery.

Then Colonel *Rumsey* was Sworn, and gave a general Account of the intended Insurrection; and said, he had heard the Prisoner was one of the Six who were to manage that Business.

*Col. Sidney*. My Lord, I must ever put you in Mind, Whether it be ordinary to examine Men upon Indictments of Treason, concerning one that I never saw nor heard of in my Life?

*L. C. J.* I tell you all this Evidence does not affect you, and I tell the Jury so.

*Col. Sidney*. But it prepossesses the Jury:

Then Mr. *Keyling* was Sworn, and gave some Account of the intended Insurrection; and deposed, that he had heard Mr. *Goodenough* say, *Col. Sidney* was to have a considerable Part in the Management of it.

The Lord *Howard* Sworn.

Page 211.  
Lord *Howard's*  
Evidence con-  
cerning the  
Cabal of Six  
who met at  
Mr. *Hambden's*.

Lord *Howard*. About the middle of *January* last, it was consider'd by some of us that met together, that it was very necessary and expedient to an Enterprize, that had been long in Hand, and fallen flat then, that it should be reviv'd by some Consult or Cabal that should be set up to give Life to it, and govern the Motions of it. The first Movers of this, for ought I know, were the Duke of *Monmouth*, the Gentleman at the Bar, and my Self. The Duke of *Monmouth* undertook to ingage my Lord *Russel*, and my Lord *Salisbury*; and this Gentleman, *Col. Sidney*, undertook to ingage my Lord *Essex*, and Mr. *Hambden*; and these constituted a little Cabal, of as great a Number as was intended. And between the middle, and the latter end of *January*, I was told, the Persons had agreed to enter into this Conjunction of Councils; and in Order to that, had appointed a Meeting at Mr. *Hambden's* House, to which I was invited. And there we met accordingly, viz. The Duke of *Monmouth*, my Lord *Essex*, my Lord *Russel*,

*Russel*, Col. *Sidney*, Mr. *Hambden*, and my Self. Mr. *Hambden* open'd the Design of our Meeting, and took occasion to Recapitulate some Design, that had been before, chiefly carried on by my Lord *Shaftsbury*, (now dead.) And also took Notice of the ready Disposition and Inclination of the Minds of Men to go on with it; and did give one Instance of it, that it being a Design communicated to so many, it had not been so much as Reveald, or a Murmur or Whisper gone about it. But took Occasion to tell us, That it was absolutely necessary, for the future, there should be some Council to guide and govern the Motions of the rest; for that there were divers Things to be taken care of, which, if not taken Care of by particular Persons, all would miscarry. And some General Heads were proposed for us to consider of, against another Meeting: Such as the Time and Place, when, and where it would be proper to begin? What Magazines would be requisite, and what Money wanting? And I remember the Sum propounded by the Duke of *Monmouth*, was 25 or 30000 *l*. But the present Resolution, was before any Procedure was made in these Things, to make a Coalition of Councils with *Scotland*, and to think of some fit Person to be sent thither to unite us into one Sense and Care. About a Fortnight or three Weeks after, we had another Meeting, and that was at *Southampton* House, at my Lord *Russel's*; and there were every one of the same Persons. It was here debated, what Answer should be given to those whose Assistance we expected, if they demanded to what End all this was? And it was mentioned, *To Resolve all into the Authority of the Parliament*; which sounded a little harsh to some that were there: But yet, upon the whole Matter, we generally consented to it; And that it was nothing but the Publick Good we all intended. Afterwards, we fell upon the Business of sending into *Scotland*, and settling an Understanding with my Lord *Argyle*, and some Leading Men there. The Gentlemen named, were my Lord *Melvin*, Sir *John Cockram*, and the *Campbels*. And Col. *Sidney* named *Aaron Smith*, as a fit Person to be sent;

and it was agreed, he should carry one Letter to Sir *John Cockram*, under the Disguise of carrying on some Business of the Plantation in *Carolina*.

*Att. Gen.* To what purpose were these Gentlemen to come up?

*Lord Howard.* These were to acquaint us how they found *Scotland* Temper'd, and what Opportunities there might be of putting them in Commotion, and how they might keep Time with us. After this, I was with Col. *Sidney*, and saw him put about Sixty Guineas in his Pocket, which, he said, were for *Aaron Smith*; but whether he gave them to him, or no, I don't know: But Col. *Sidney* told me afterwards, he was gone, and was upon the Road, and he heard from him about *Newcastle*.

*L. C. J.* Did you understand he was gone in pursuance of that Debate?

*Lord Howard.* Yes, my Lord, that was the whole End of his going, and Col. *Sidney* undertook to send him.

*L. C. J.* Will you ask him any Questions?

*Col. Sidney.* I have no Questions to ask him.

Then Sir *Andrew Foster* was sworn, who deposed, that Sir *John Cockram*, and the *Campbells*, Father and Son, came to Town last Summer; and that Sir *John Cockram* pretended they came to make a Purchase in *Carolina*.

And Mr. *Atterbury* the Messenger was sworn, who deposed, that Sir *Hugh Campbell*, and Sir *John Cockram*, were taken as they were making their Escape from *Blackfryers* in a Boat, in *June* or *July* last; and that they came to Town some little time before.

Page 213. Then Sir *Philip Leyd* was sworn, and deposed, that having a Warrant to seize the Prisoner's Papers, he went to his House, and did seize them, amongst which were these. He put them up in a Pillowbear, and that in a Trunk, and desir'd Col. *Sidney* to put his Seal on them, that there might be no Mistake; which he refusing, Sir *Philip* Seal'd it with his own; and it was carried to Secretary *Jenkin's* Office: They were seiz'd about the latter end of *June*.

Mr.



Mr. Sheppard, and Mr. Cary, were Sworn, and the Libel mentioned in the Indictment was shewn them; and it was demanded of them, Whether that was the Prisoners Hand? To which they answer'd, They had seen his Hand to several Bills of Exchange, and they believ'd it to be his.

The Libel prov'd to be the Prisoners, by similitude of Hands.

And Mr. Cook was Sworn, and depos'd to the same Effect.

*Att. Gen.* I pray the Libel may be read.

*Col. Sidney.* I pray it may be all read.

*L. C. J.* Mr. Attorney must have what Part he desires read; and you shall have what Part you desire, read afterwards.

*Part of the Libel was read, particularly that laid in the Indictment.*

Page 214.

*Col. Sidney.* I do not know what to say to it, to read it in pieces thus.

Page 215.

*L. C. J.* I perceive you have disposed them under certain Heads: To what Heads shall they read?

*Col. Sidney.* My Lord, Let him give an Account of it that did it.

*Att. Gen.* We desire to ask my Lord Howard, Whether, at their Debates, there were any Reflections upon the King?

*Lord Howard.* Not Personally upon the King, but upon the Misgovernment: And that which gave the principal Disgust to the Nation, was the imposing on the City at that time, that we took to be the chief Grievance.

*Att. Gen.* We have only this piece of Evidence farther: It is the Record of my Lord Russel's Conviction, who was one of the Prisoner's Accomplices.

*Mr. Trinder* was Sworn, and testified he had examin'd it, and it was a true Copy of the Record.

*Col. Sidney.* I desire to know upon what Statute I am Indicted?

*L. C. J.* Mr. Attorney says, you are Indicted upon the 25 *Ed. III.* which makes it High-Treason to Conspire the Death of the King. The Overt-Act is sufficiently set forth in the Indictment; now the Question is, whether it is prov'd?

Col. Sidney's  
Defence unto  
the Libel  
found in his  
Study.

Page 217.

Similitude of  
Hands, whe-  
ther proof of  
a Man's Wri-  
ting.

Page 218.

Col. Sidney. I am Indicted for Conspiring the Death of the King, because such a Paper is found in my House; I think that can be nothing at all to me: For, though Sir *Philip Loyd* did ask me whether I would put my Seal to it, he did not ask me till he had been in my Closet; and I knew not what he had put in, and so I told him I would not do it. Then came these Gentlemen upon the Similitude of Hands: My Lord, one told me, that a Person came to him, within these two Days, and offer'd to Counterfeit any Hand he should shew him, in half an Hour. And there is a like Case of my Lady *Carr* some few Years ago: She was Indicted of Perjury; and, as Evidence against her, some Letters of hers were produc'd, that were contrary to what she swore in *Chancery*; and her Hand was prov'd, that is to say, it was like it: But my Lord Chief Justice *Keyling* directed the Jury, that though in Civil Causes it was a Proof, yet it is the smallest and least of Proofs, but in Criminal Causes it is none at all. The Attorney shews these Papers to me, I do not know whether they are my own or no; but these very Papers, such as they are, I do abhor, as much as any one can, such a Design. Look upon them; you see they are all old Ink: These Papers may be writ, perhaps, these Twenty Years, the Ink is so old. And, my Lord, it is a *Polemical Discourse*; it seems to be an Answer to *Filmar*, which is not Calculated for any particular Government in the World. And they, by a strange kind of Construction and Imagination, will have it, that these Papers, said to be found in my Study, have Relation to this Plot, as they call it; I know of none, nor am in none. But if a Commoner of *England* write his present Thoughts, and another Man looking on the Book, write his present Thoughts, what great hurt is there in it? However, I say, First, It is not prov'd upon me; and Secondly, It is not a Crime if it be prov'd. Besides, my Lord, if these Papers are right, it mentions Two hundred and odd Sheets, and these shew neither Beginning nor Ending. And will you, my Lord, indict a Man for Treason, for scraps of Paper found in his House,

House, relating to an Ancient Paper, intended as innocently as any Thing in the World; and piece and patch this to my Lord *Howard's* Discourse, to make this a Contrivance to Kill the King? Then, my Lord, I think it is a Right of Mankind, and 'tis exercis'd by all Studious Men, to write in their own Closet what they please, for their own Memory, and no Man can be answerable for it, unless they Publish it.

*L. C. J.* Pray don't go away with that Right of Mankind, that it is lawful for me to write what I will in my own Closet, so I do not publish it. We must not endure Men to talk thus: That by the Right of Nature, every Man may contrive Mischief in his own Chamber, and is not to be punish'd, till he thinks fit to be call'd to it.

*Col. Sidney.* If they will produce the whole, then I can see whether one Part contradicts the other. You ask me, what other Passage I would have read; I don't know a Passage in them: I can't tell whether it be good or bad. And what if any Body had in my House, found Papers that are not well justifiable, either in my own Hand, or another's, is this Treason? Does this imagine the Death of the King? Does this reach the Life of the King? If any Man can say, I ever Printed a Sheet in my Life, I will submit to any Punishment? Nor have these Papers any Relation to the Design against the King's Life. You find only Scraps of Papers, never perfect, written many Years ago, and that could not be Calculated for Raising the People now. And what Man can be safe, if the King's Council may make such (Whimsical, I won't say, but) Groundless Constructions? If I had Publish'd it, or if the Thing had been whole, and mine, I must have answer'd it? But for these Scraps, never shew'd any Body; that, I think, does not at all concern me. And I say, if the Jury should find it, (which is impossible) I desire to have the Law refer'd to me.

Then for Point of Witness, I cannot be indicted, much less try'd and condemn'd, by the 25th of *Edw. III.* for by that Act there must be Two Witnesses to that very Branch unto which the

A Man is not at liberty to write Treason in his Closet, though he never publish it.

Treason does relate: Now the Conspiring the Death of the King, and the Levying War, are Two distinct Treasons, and there must be Two Witnesses to either of these; my Lord *Howard* only speaks of the Six Men who were a select Council, and he is but One Witness; and if by the Law there must be Two Witnesses to the same Fact, there is an End of this Matter. For one to come and tell a Tale of a Tub of an imaginary Council, and another of a Libel or Paper written no Body knows when, is such a Thing as you can never get o'er.

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*L. C. J.* If you rely upon that, we will direct the Jury presently.

*Col. Sidney.* My Lord *Howard* sets forth his Evidence very Rhetorically, but it does not become a Witness; for he is only to tell what is done and said. He says *they* took upon them to conspire; but does not say what one Man said, or what one Man resolv'd, much less what I did; and I desire I may have Counsel to that Point of there being but one Witness.

*L. C. J.* That is a Point of Fact.

*Col. Sidney.* Then, my Lord, if the War was not actually Levy'd, it is not within the Statute.

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*L. C. J.* The Court will have Patience to hear you, but this is Mispending your Time. If you can answer the Fact, or if you can disparage the Witnesses, do it; but do not ask us Questions this Way or t'other.

*Col. Sidney.* As to my Lord *Howard*, he hath accus'd himself of divers Treasons, and I do not hear he hath his Pardon of any: He is under the Terror of these Treasons, and the Punishment for them; he hath shewn himself to be under that Terroure. He hath said, that he could not get his Pardon till he had done some other Jobs, till he was past this Drudgery of Swearing, that is, he would procure his own Indemnity by Destroying of others. Besides, my Lord, he is my Debtor, I lent him a considerable Sum of Time of his great Necessity, and when the Mortgage was forfeited, to avoid paying it, he gets me laid up in the Tower; and he would have perswaded my Servants to put my

Objects to my  
Lord *Howard's*  
Evidence, that  
he had con-  
fess'd himself  
*Particeps Crimi-*  
*nis.*



my Plate and Goods into his Hands, when I was made Prisoner. My Lord, He hath made several Affirmations, with Eves and Hands lift up to Heaven, that he believ'd I was Innocent. And tho' my Lord *Howard's* Testimony were to be credited, it is but single, as to the Consult and the Sending of *Aaron Smith*: Besides, Conspiring to Levy War is not Treason, and I desire to have Council upon that.

Page 218.

*L. C. J.* It is not a Question, you had as good ask me, Whether the first Chapter of *Littleton* be Law?

*Just. Withins.* If you agree the Conspiracy, I will tell you my Mind of it.

Then my Lord *Anglesey* and my Lord *Clare* were call'd.

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My Lord *Anglesey* depos'd, That he had heard my Lord *Howard* say he knew of no Plot, and that he could not charge my Lord *Russel* with it, or any body else.

My Lord *Clare* depos'd, That my Lord *Howard* had, with great Affeuerations declared, That Col. *Sidney* was Innocent as any Man breathing; that he heard him use great Encomiums in his Praise, and seem'd to bemoan his Misfortune; and that never any Man was more engaged to another than he was to Col. *Sidney*; and that when he told him of Papers that were found, my Lord *Howard* said, He was sure they could make nothing of any Papers of his; and that he said this at my Lord *Clare's* House the Beginning of *July* last, about a Week before my Lord *Howard* was taken.

Witnesses depose they had heard my Ld. *Howard* say, he believ'd the Prisoner was Innocent.

*Att. Gen.* And, my Lord, would not any Man have said as much, that had been in the Plot?

Then Mr. *Howard* was call'd, who depos'd, That he heard my Lord *Howard* say, he believ'd it was a Sham Plot; and that when he heard Col. *Sidney* was taken, he was very melancholy, and being ask'd the Reason, he said, He had that particular Obligation to Col. *Sidney*, that no one Man had to another.

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Dr. *Burnet* was call'd, and depos'd, That my Lord *Howard*, with Hands and Eyes lift up to Heaven, had protested he knew nothing of any Plot,

Plot, and said he look'd upon it as a ridiculous thing.

One *Joseph Ducus*, a *Frenchman*, was call'd and depos'd, That he had heard my Lord *Howard* say he knew nothing of the Plot, and that he offer'd his Coach to help remove some of the Colonel's Things from his House.

My Lord *Paget* depos'd, That my Lord *Howard* said he knew nothing of the Plot, or of any body concern'd in it.

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*Mr. Edward Howard* depos'd, That since the Plot broke out he heard my Lord *Howard* say very solemnly, That he could neither accuse himself nor no Man living; That he did further assure him the Plot was a Sham, and such a one as was too black for any Minister in publick Employment to have devis'd, but that in his Conscience it was forg'd by Jesuits and Papists; and I am sure, if I had the Honour to be of this Gentleman's Jury, I would not believe him.

*L. C. J.* This must not be suffer'd; the Jury are bound by their Oaths to go according to their Evidence, they are not to go by Men's Conjectures.

*Mr. Blake* was call'd, and depos'd, he heard my Lord *Howard* say, He must not have his Pardon till the Drudgery of Swearing is over.

*Grace Tracey* was call'd, and depos'd, That she heard my Lord *Howard* say, That he was sure *Col. Sidney* knew nothing of the Plot, and that he desir'd the Colonel's Goods might be sent to his House.

*Elizabeth Penwick* depos'd, That my Lord *Howard* took God to Witness he knew nothing of the Plot, and believ'd the Colonel knew nothing of it neither, and believ'd it was only Malice: He said he was in the Tower himself Two Years ago, and he believ'd Colonel *Sidney* sav'd his Life; and he desir'd his Plate might be sent to his House to be secur'd.

*Mr. Wharton* stood up and said, He would undertake to imitate any Sheet in the Label, that the Court should not know one from another.

*L. C. J.*

L. C. J. If you have no more Witnesses, apply your self to the Jury.

Col. Sidney. It is first imagined, that I intended to raise a War, and then 'tis imagin'd that War should tend to the Destruction of the King; now that may follow, but that is not natural or necessary, and being not natural or necessary, it can't be so understood by the Law. Many Wars have been, and the Death of the King has not follow'd: 'Tis Two distinct Treasons, to make War, and to endeavour to Kill the King. Now, as there is no manner of Pretence that I endeavour'd to Kill the King directly, so it can't be by Inference, because 'tis Treason under another Species, and therefore tho' I had made War I could not be said to have Conspir'd the Death of the King. Besides, I say, It is not the best Man's Evidence here would be good in this Case, because the Law requires two. The next Thing, is the Business of *Aaron Smith*: My Lord *Howard* tells you of a Letter sent with him, but he does not tell you by whom writ, what was in it, or whether it was deliver'd or no. Nor have I sent or writ a Letter into *Scotland*, since the Year 59. I return'd into *England* in the Year 77, and since that Time, have not writ or receiv'd a Letter from *Scotland*: And as to the *Scotch* Gentlemen that are come hither, I never saw the *Campbells* or *Monro* in my Life. As to the Papers, What Agreement is there between them, and that other Business of the Select Council, as my Lord *Howard* calls it? And what was this Select Council (suppose my Ld. *Howard* were to be credited) but a few Men, talking at large, of what might be, or what might not be, without any manner of Intention of doing any Thing? They did not so much as inquire whether there were Men, Arms, or Ammunition in the Country; and how unlikely it is that a War should be made by Five or Six Men, not knowing one another, or not trusting one another; for what Dr. *Cox* said at my Lord *Russel's* Tryal of my Lord *Howard's* not being trusted by any Party, he might have said of some others; and I desire your Lordship to consider, Whether there be a Possibility for any Men that have the Sense of

Col. Sidney's  
Defence, as to  
the Consult.

Page 223.

Porters

Porters to do such Things as my Lord *Howard* would put upon us? He, the great Contriver of this Plot, goes to these Consults, and agrees on nothing: Then he goes into *Essex* upon Important Business, greater than the War of *England* and *Scotland*; to what purpose? To look after a little pimping Mannor: And what then? Why then it must be laid aside, and he must be idle five Weeks at the *Bath*, and there is no inquiring after the Design; is there any appearance of Probability in all this? And I say farther, my Lord, that you are to go according to plain Proof, and that Constructive Treasons belong only to the Parliament: If I have neither endeavour'd to Kill the King, or Levy'd War, then 'tis Matter of Construction, and does not belong to any private Court.

Page 224.  
The Solicitor  
General's Re-  
ply.

*Sol. Gen.* The Crime the Prisoner stands accused of, is Compassing and Imagining the Death of the King; that which we go about to prove that Compassing and Imagining by, is, by his Meeting and Consulting how to Raise Arms against the King; and by plain Matter, in Writing under his own Hand, where he does affirm it is lawful to take away and destroy the King. Now, notwithstanding what the Prisoner has objected, it hath been Adjudg'd over and over again, That an Act which is one Branch of that Statute, may be an Overt-Act to prove a Man Guilty of another Branch of it. Levying War is an Overt-Act to prove a Man Guilty of Conspiring the Death of the King, as was adjudg'd in the Case of Sir *Henry Vane*; and so is Meeting and Consulting to raise Arms. And Reason does plainly speak it to be so, for they that conspire to raise War against the King, can't be presum'd to stop any where, till they have Dethron'd or Murder'd the King; and the Prisoner says, there must be two Witnesses to every particular Fact: This hath been often Objected, and as often Over-rul'd; it was Over-rul'd Solemnly in the Case of my Lord *Stafford*.

Page 226.

In the next Place, as to the Papers found in Col. *Sidney's* House; we prove them to be Col. *Sidney's* Hand, by as much Proof as the Thing is capable of; and such a Proof, as in all Cases hath been allow'd.

And



And that is, by Men who know and are acquainted with his Hand-writing, who come and swear, they believe this to be his Hand. And Sir *Philip Loyd* attests, that these very Papers were found in the Prisoner's Study, on a Table where he us'd to write: And for the Surmize, that they were laid there, is altogether Foreign, and without Ground. And if they were wrote by him, the next Thing will be, How far this will be Evidence, to prove his Compassing and Imagining the Death of the King. Compassing and Imagining the Death of the King, is the Act of the Mind, and is Treason, while it remains secret in the Heart; though no such Treason can be punish'd, because there is no way to prove it. But when once there is any Overt-Act, that is, *Any Thing that does manifest and declare such Intention*; then the Law takes hold of it, and punishes it as High Treason.

Now after this Evidence, no Man will doubt whether it was in the Heart of the Prisoner to destroy the King. But he objects, that this is but part of a Book, and unless you take the whole, nothing can be made of it. As it is in wresting of Texts of Scripture, says he, you may as well say that *David* says there is no God, because *David* hath said, *The Fool hath said in his Heart there is no God*. But, Gentlemen, the Application wont hold; for here you see a continued Thread of Argument, 'tis not one Proposition, but an whole Series of Argument. These are the Positions, *That the King derives all his Power from the People: That 'tis Originally in the People; and that the Measure of Subjection, must be adjudged by the Parliament. And if the King does fall from doing his Duty, he must expect the People will exact it. And this, he has laid down, as no way prejudicial to him: For, says he, the King may refuse the Crown, if he does not like it on these Terms. But, says he, if he does accept it, he must expect the Performance will be exacted, or Revenge taken by those he hath betray'd. He takes notice of it, as a very absurd Position, That the King should judge in his own Cause, and not the People. That would be to say, The Servant entertain'd by the Master, shall judge the*

Treasonable  
Positions con-  
tain'd in the  
Libel.

the Master, but the Master shall not judge the Servant. Gentlemen, after this sort of Argument, he comes to this settled Position: *We may therefore, says he, change or take away Kings, (without breaking any Yoke, or that is made a Yoke.) The Injury is therefore in imposing the Yoke, and there can be none at all in breaking it.* He goes on in his Book, and by way of Answer to an Objection, *That if there be no Injury, yet there may be Inconvenience; if the Headless Multitude shall shake off the Yoke.* And says, *I would fain know how the Multitude came to be Headless.* He gives you many Instances in Story, from Foreign Nations, and then comes home to the *English*; and tells you how all Rebellions, in later Ages, have been Headed. And tells you the Parliament is the Head, or the Nobility and Gentry that compose it: And when the King fails of his Duty, the People may call it. The Multitude therefore is never Headless; but they either find or create an Head. So that here is a plain and avow'd Principle of Rebellion, establish'd upon the strongest Reason he has to back it. Gentlemen, this, with the other Evidence that has been given, will be sufficient to prove his Compassing the Death of the King.

Page 227.

Words spoken  
upon a Suppo-  
sition, ad-  
judged High  
Treason.

He says, in his Book, in another part, *That the Calling and Dissolving of Parliaments is not in the King's Power.* You all know how many Parliaments the King hath Call'd and Dissolv'd; if it be not in his Power, he hath done that that was not in his Power, and so contrary to his Trust. Gentlemen, Words spoken upon a Supposition, will be High Treason, as was held in King James the 1st's Time, in the Case of *Collins*, in *Rolls's Reports*. *The King being Excommunicate, may be Deposed and Murdered*, without Affirming he was Excommunicated; and this was enough to Convict him of High Treason. Now, according to that Case, to say the King having broken his Trust, may be Deposed by his People, would be High Treason; but here he does as good as affirm, the King had broke his Trust. When every one sees the King hath dissolv'd Parliaments: This reduces it to an Affirmation. And though this Book were not

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not brought to the Council of Six, my Lord Howard speaks of, to be perused, and there debated; yet it will be another, and more than two Witnesses against the Prisoner: For suppose a Man was in a Room, and there were two other Men, and he talks with them apart, and comes to one and endeavours to persuade him that it is lawful to rise in Arms against the King, if so be he breaks his Trust: And he goes to the other, and tells him the King hath broken his Trust, and we must seek some way to Redress our Selves, and persuade the People to Rise; these two Witnesses do so tack the Treason together, that they will be two Witnesses to prove him Guilty of High Treason. And you have heard one Witness prove it positively, that he Consulted to Rise in Arms against the King; and here is his own Book, says, *It is lawful for a Man to Rise in Arms against the King, if he breaks his Trust*: And in Effect, he hath said, *The King hath broken his Trust*. And this is a sufficient Demonstration what the Imagination of the Heart of this Man was, That it was the Destruction of the King and Government, and indeed of all Governments; for there can be no such Thing as Government, if the People shall be Judge in the Case——— I think this will be sufficient Evidence of his Consulting the Death of the King. Some Men may, by Passion, be Transported into such an Offence; but this Gentleman proceeds upon a surer Foundation, it is his Reason, it is his Principle, it is the Guide of all his Actions, it is that by which he leads and directs the steady Course of his Life. A Man convinc'd of these Principles, what wont he do to accomplish his Designs! Gentlemen, how dangerous is this Conspiracy, how is it Rooted in him! That he should write it as his Principle, *That it is lawful to Depose Kings, they breaking their Trust; And that the Revolt of the whole Nation, cannot be call'd Rebellion*. It will be a very sad Case, when People act this according to their Consciences, and do all this for the Good of the People, as they would have it thought. Gentlemen, We think we have prov'd it sufficiently, that it was the Imagination

The King's  
Council to  
conclude.

Page 228.  
Two Witnes-  
ses to several  
Facts, so it  
be the same  
Species of  
Treason suffi-  
cient.

Writing a suf-  
ficient Overt-  
Act.

Conspiring to  
Levy War, E-  
vidence of a  
Compassing  
the King's  
Death.

Or any Thing  
that discovers  
the Imagina-  
tion of the  
Heart to de-  
pose or de-  
stroy the  
King.

Page 229.  
Circumstanti-  
al Evidence.

gination of his Heart to Destroy the King, and consequently made sufficient Proof of High Treason.

Then Col. *Sidney* offer'd to reply to the Solicitor, but the Court would not admit it; it being the constant Course for the King's Council to conclude.

My Lord Chief Justice in Summing up the Evidence, observ'd, that though there be two Witnesses requir'd to prove a Man Guilty of High Treason; yet if two Witnesses prove two several Facts that have a Tendency to the same Treason, (As in my Lord *Stafford's* Case, where there was one Witness to a Conspiracy in *England*, and another to a Conspiracy in *France*) they are held sufficient to Convict a Man of High Treason.

That though some Judges have been of Opinion, that Words of themselves were not an Overt-Act, yet none ever question'd but a Letter would be a sufficient Overt-Act to prove a Man Guilty of High Treason, for *Scribere est Agere*.

That if the Indictment had been for Levying War, there must have been a War actually Levy'd to make it High Treason; but the Indictment being for Compassing the King's Death, the Levying War, (or conspiring to Levy War) may be given in Evidence, to prove the Conspiracy of the King's Death. For it is the Imagination of the Heart which is the Treason, and when this appears by any Overt-Act, which does naturally evince that the King must be Depos'd, Destroy'd, Imprison'd, or the like, it will be a sufficient Evidence of Treason, within the 25 *Ed. III.*

That if there be but one Witness to prove a direct Treason, and another Witness to a Circumstance that contributes to that Treason, that they will be deem'd two Witnesses to prove the Treason. That all the Judges of *England*, had been lately commanded to meet, and one that was Senior of the King's Council, was pleas'd to put this Case: *If I buy a Knife of J. S. to kill the King, and it be prov'd by one Witness I bought a Knife for this purpose, and another comes and proves I bought such a Knif of J. S. they are two Witnesses sufficient to prove a Man Guilty of High Treason.* And so



so it was held by all the Judges of *England* then present in the presence of the King's Counsel.

That in Case of any Treason, (except that for which the Prisoner at the Bar stood Indicted) one Witness was sufficient.

That the Witnesses who knew the Prisoners Hand, swearing they believed in their Consciences that it was his Hand, and the Papers being found in his Study, on the Table where he us'd to Write, was strong Evidence of their being his.

That if the Prisoner did design to Depose or Remove the *King*, and if in order thereto he was guilty of Conspiring to Levy War, or was privy to the Letter Writ by my Lord *Russel* and sent into *Scotland*, these wou'd be Evidences against him, that if the Jury believed the Book found in the Prisoners Study, to be Writ by him, it was more than two and twenty Witnesses against him; for there he says that the *King* is Responsible to the People, that he is but their Trustee, that he had betray'd his Trust, and misgoverned, and now he was to give it up that they might be all Kings themselves.

After my Lord Chief Justice had directed the Jury, Justice *Withins* declar'd that all the Bench Concurr'd with the Lord chief Justice, in all the Points of Law deliver'd by him.

Then the Jury withdrew, and in about half an Hours Time, returned and brought the Prisoner in Guilty.

*Monday 26 November.* *Algernon Sidney Esq.* was brought to the Bar of the Court of King's Bench, to recieve his Sentence.

*Col. Sidney* observed, that several of his Jury were not Freeholders, the Court acquainted him, that it was the Opinion of all the Judges of *England*, that this was no Cause of Challenge.

Then the Prisoner desir'd the Indictment might be read again, which was granted; afterwards he desir'd to see it, but that was deny'd him.

The Prisoner repeated several Parts of the Defence he made at his Tryal, and urg'd them in arrest of Judgment, and Mr. *Bamfield* as *Amicus Curie*, said, he suppos'd his Lordship would not give

Vol. III

L

Judgment

In other Treasons one Witness is sufficient.

Similitude of Hands held to be proof of a Man's Hand Writing.

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He is Convicted.

Want of Freehold no Objection to a Jury-man in Treason.

Page 232.  
Deny'd a fight of the Indictment.

Page 233.

Judgment, if there were a material defect in the Indictment. And that *Defensor Fidei* was left out in the Stile of his Majesty as the Clerk read it.

Sentence passed.

His Attainder Revers'd at the Revolution.

The Lord Chief Justice thank'd him for his Friendship, but said he was satisfied, and that there Remain'd nothing for the Court to do, but to pronounce Judgment. And accordingly Judgment was pronounced as usual in Cases of High Treason.

This Attainder was Revers'd in Parliament the 1st W. and M.

Page 234. *The Tryal of John Hambden, Esq;*  
6th Feb. 36 Car. II. 1683.

*The 28th November the 35 Car. II. 1683. He was brought by Habeas Corpus from the Tower of London to the Kings Bench Bar, and Arraign'd upon an Indictment preferr'd against him, for a Misdemeanor.*

The Indictment for a Misdemeanour in Con-federating with others of the King's Subjects, and Consulting to raise a Rebellion.

“ THE Indictment sets forth that the De-  
“ fendant *John Hambden*, being a Seditious  
“ Malitious, Evil dispos'd Person, and intending  
“ to disturb the Peace of the Kingdom, the last  
“ Day of *June* in the 35th Year of the King, and  
“ divers other Days and Times, at the Parish of  
“ *St. Giles's* in the Fields in the County of *Mid-*  
“ *dlesex*, did unlawfully Assemble and Confe-  
“ derate himself with divers evil dispos'd Persons  
“ the Kings Subjects, and then and there with  
“ those other Persons, did Maliciously and Sedi-  
“ tiously Consult and Conspire to Raise a Rebellion  
“ within this Kingdom, and to provide Forces and  
“ Arms in divers parts of the said Kingdom. And  
“ that the better to Compleat their said Treasons;  
“ They did the said last Day of *June*, Consult  
“ and Agree, to send certain Persons, to the Jurors  
“ unknown, into *Scotland*, to Invite several Evil  
“ dispos'd Persons, there to join in the said Conspi-  
“ racy. To the Manifest Contempt of the Laws of  
“ this Kingdom, the Evil Example of others and  
“ against the Kings Peace, &c.

To which Indictment he pleaded *Not Guilty*.

Upon

Upon which Plea, Issue was join'd between the *Attorney General*, on behalf of the *King* and the Defendant, and Bail was then taken for the Defendant's Appearance the next Term.

Page 235.

6th February, 36 Car. II. 1683. The Defendant was brought to his Tryal at the Kings Bench Bar, on the Motion of *Sir Thomas Jenner* the Kings Serjeant, the beginning of the Term; Then the Jury were call'd, and the Defendants Council challeng'd *Joshua Galliard, Esq*;

*L. C. J.* You must shew your Cause of Challenge now, it being against the King.

*Sir George Jefferies.*

*Mr. Williams* he has an Office in the Forrest; and therefore not an Indifferent Person; To be of the Kings Robe, or Pay, or Salery is an Exception in any Case where the King is concern'd.

*Mr. Wallop*, It is the Opinion of my Lord *Coke*, in his *Institutes*, fol. 156. That this is a good Cause of Challenge.

*L. C. J.* But there is the Opinion of all the Judges in *Henry IVth's* Time, against it, and in *Roll's Abridgment*. Title Challenge, He sets down four Books one after another, that it is no Cause of Challenge, even to be the Kings Tenant.

*Mr. Trevor*. There is an Express Opinion in my Lord *Roll's*, that to be of the Livery, or a Menial Servant of the Crown, is a good Cause of Challenge, in that of 1st *Roll's* he only cites some Books, but the other is his own Opinion.

*L. C. J.* Neither *Mr. Serjeant Roll's*, nor my Lord *Coke* when he delivered that Opinion, are to be reckon'd such Authorities in Crown matters: It is only a Challenge to the Favour which ought not to be in the King's Case.

No Challenge to the Favour of the King's Case.

*Mr. Wallop*. Certainly my Lord there is a great difference between the General Allegiance of all Men, (and so of a general Tenure,) and the Dependance of a particular Person, who is a Menial Servant, and receives Wages of the King.

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*L. C. J.* But the Law is, if he were an Immediate or Mediate Tennant to any but the King; and his Lord were party to the Suit, It wou'd be a good Cause of Challenge, but the being Tenant

Sir Robert  
Smyer Attor-  
ney General.

to the King is no good Cause of Challenge, And tho' I wou'd not have it gone away with as Law, that this is a good Cause of Challenge, neither wou'd I have Mr. *Attorney* Insist upon a Jury-man.

The King's  
Counsel how-  
ever agree to  
set aside the  
Persons ex-  
cepted to.

Page 237.

Mr. *Attorney*. If your Lordship has given your Opinion, I desire he may stand by.

Afterwards Mr. *Shoreditch* Serjeant at Arms was Challeng'd, and tho' the Court were of Opinion, He might serve on the Jury, notwithstanding his Place, yet Mr *Attorney* consented to set aside, that there might be no Room for Caviling at the proceedings, but observ'd to the Defendants Council, that they were at Liberty, to have struck out either of these Men, when they were before the Prothonotary and need not have Troubl'd the Court with it.

After the Jury were sworn, Mr. *Holloway* the King's Council open'd the Indictment.

The Court  
Wave the  
Prosecution  
of High Treason that the  
Defendant  
may want no  
Advantages  
for his defence.

Page 238.

Mr. *Attorney* observ'd that the Matter of this Tryal, had been formerly under Examination, in several Tryals for High Treason, in which the Whig Party, thought the Persons accus'd lay under great Hardships, in not having the Advantage of Counsel, or their Witnesses examined upon Oath; That therefore the King was contented the Defendants should be Prosecuted in a milder Way, to give him all Opportunities of clearing his Innocence, if he had any Witnesses to do it; and that if having Council, might contribute to the Advantage of his Cause, he might be allow'd that too. Then the *Attorney*, proceeded to shew the Nature of the Evidence, and observ'd that one of the Conspirators, the Earl of *Essex* had given Judgment against himself; But the party had been so diligent and officious to sling it upon the Government, that two others of the *Juncto*, had received the Judgment of the Law, and that the other two, the Lord *Howard*, and the Duke of *Monmouth*, who had confessed the whole Matter; The King had been pleas'd to extend his Mercy to them: And that they were summon'd to be here this Day, that the World if they wou'd open their Eyes, (he meant the discontented World) might



might see there was nothing intended, but the Peace and Quieting of the Kingdom.

*James Duke of Monmouth* was call'd as a Witness, but not Appearing, *Mr. Atterbury* was sworn; Who depos'd that being Commanded by the *Attorney General*, to serve the Duke of *Monmouth* with a *Subpæna* to appear in Court this Day, to testify his Knowledge in a Case between the King and *Mr. Hambden*. He went to the Duke of *Monmouth's* House, at *Moor Park* last Friday was se'night, and delievered the *Subpæna* to *Mr. Rawkins* the Dukes Steward there, and that *Mr. Rawkins*, promised him the Duke shou'd have it; That the same Day he left another *Subpæna* to the same Effect with the Dukes Porter, at his House at the Cockpit, and he promis'd the Duke should have it that Night, or the next Morning, that he left a third *Subpæna* for the Duke at *Mr. Rows's* in Pall-Mall where the Duke sometimes lodg'd.

Duke of *Monmouth* call'd as a Witness, but did not appear.

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*L. C. J.* Call his Grace again.

Which was done; but he did not appear.

Then my Lord *William Howard* was Sworn.

*Att.Gen.* Pray, my Lord, Give the Court and the Jury an Account what you know of any Meeting by the Gentleman now accus'd, and the Duke of *Monmouth*, my Lord *Russel*, your self, and others.

Lord *Howard*. My Lord, After the Disappointment given to an Undertaking that was begun by my Lord *Shaftsbury*, —

*L. C. J.* My Lord, I would not willingly interrupt you; but pray what was that Undertaking of my Lord *Shaftsbury's*?

Lord *Howard*. Some few Days after *Michaelmas* Captain *Walcott* came and din'd with me, and after Dinner told me my Lord *Shaftsbury* had left his House, and betaken himself to a private Lodging, and hid himself from the rest of his Friends, but desir'd to see me. The next Day *Mr. Walcott* came again, and shew'd me the Way to my Lord *Shaftsbury's* Lodgings, which were then at *Mr. Watson's*, a Citizen, in a little Street by *Wood street*. When I came there my Lord *Shaftsbury* said, he was forc'd to withdraw himself from

Lord *Howard's* Evidence of my Lord *Shaftsbury's* Plot.

his own House for fear of being attack'd again by Sham Charges and Plots, and false Evidence, as he had been before : For now, he said, they had the Possession of all Juries, by having those Sheriffs which were impos'd upon the City, and he could not think his own or any Man's Life safe, and to be accus'd was sufficient to bring his Life into very great Danger, and for that Reason he had withdrawn himself to that private Retirement; and that being there, he was resolv'd to make some speedy Push for Recovering the Liberties of *England*. He said, that there was Preparation made in the City, of several Thousands of Men, that were in Readiness to Rise, and for his Part, he was resolv'd to be set on Horseback (for, get on Horseback he could not) and that there were great Numbers that were ready, when he did but hold up his Finger, to be drawn together at any Time; that divers had been drawn out of the Country to join with them by insensible Parties, to the Number of Eighty or an Hundred, which I found were to have been Headed by Col. *Rumsey*, upon the Day of declaring the Sheriffs; but finding there was nothing done, he withdrew himself and his Man thither: But said, that there was such a general Preparation in the City, that if the Duke of *Monmouth*, my Lord *Russel*, and my Lord *Grey*, had not fail'd him, but had been in a Readiness with the Men they had promis'd to raise in several Counties, it had been a sure Game; but, says he, they have deserted me, and cannot be in a Readiness they say : And he proceeded to speak several sharp Things of the Duke of *Monmouth*, on Account of his Ambition, that he thought to have All under his Command, &c. I desir'd Leave to wait on the Duke of *Monmouth*, and expostulate the Matter with him, and accordingly went to the Duke's at *Moor-Park*, the 4th of *October*, and acquainted him with what my Lord *Shaftsbury* had said. The Duke reply'd, I think the Man is Mad; we did undertake to do this, 'tis true, but not by the Time he speaks of, and things are not ready : He acts so preposterously that he will undo us all. I propos'd an Interview between them, and observ'd,

It

It was Madness to be thus divided in so great a Business. After this the Duke told me, that he would do what he could to prevent an untimely dangerous Undertaking; (he did not own to me he had seen my Lord *Shaftsbury*, but indeed swore he had not seen him, but I find since he did.) About Four or Five Days after, Capt. *Walcott* came and told me such a Day was set for the Rising, but it being disappointed upon the Consultation at Mr. *Sheppard's*, my Lord *Shaftsbury* took a Resolution to be gone, and went away to *Holland*, and died in *Holland*.

*Att. Gen.* Now give an Account of what was subsequent to this.

*Lord Howard.* This was in *November*. After this, there being frequent Conferences between me and Col. *Sidney*, I acquainted him with these Transactions, which he was before a Stranger to. We then took up a Resolution to form a Council, that might, for the Time to come, give such Directions as might regulate the Motions of this Affair. He undertook to speak to my Lord *Essex* and Mr. *Hambden*, and I was to bring the Duke of *Monmouth* to a right Understanding with him. I mov'd the Matter to the Duke, who went with me to Col. *Sidney's* House, and there did the Duke of *Monmouth* undertake to bring in my Lord *Russel* and my Lord *Salisbury*. About Ten Days after Col. *Sidney* told me, my Lord *Essex* was very forward in it, and he did not doubt but Mr. *Hambden* was very willing to be in it too, that they had appointed a Meeting at Mr. *Hambden's* House, and he would carry me thither: This was about the Middle of *January*, and was the first Meeting that I knew of; and there we met all Six, and we discours'd of the Time and Places where to Rise, but among other Things it was resolv'd, as a principal Point, that there should be a Preparation made for a Treaty with *Scotland*, and an Understanding settled with *Argyle* and others there, for till this was done we could not be ripe for any Resolution.

*L. C. J.* When you met at Mr. *Hambden's*, who began the Discourse?

L 4

Lord

Page 241.

Lord Howard's  
Evidence concerning the  
Council of six.

The Scotch to  
be invited in-  
to the Con-  
spiracy.

Lord *Howard*. Mr. *Hambden* intimated to us the End of our Meeting, That we were to consult and advise how to put Things into a better Method and Posture than formerly, and desir'd we would sit down and discourse of these Things, and some discours'd of the Time, and others of the Places where we should begin, some of Raising Money, and the Duke of *Monmouth* nam'd such a Sum as 20 or 30000*l*. But the Thing that was principally concluded to be taken Care of, was the Settling such a Concurrence and Correspondence with *Scotland*, that they might chime in at the same Time, and so we might give as many Diversions, both at Home and Abroad, as could be at one and the same Time.

*Att. Gen.* Did Mr. *Hambden* discourse of this Matter?

Page 242.

Lord *Howard*. I cannot speak to the Discourse of any one in particular, but we were all consenting and concurring, no body dissented or oppos'd it.

*L. C. J.* Was there any sort of Complaint made of the Government?

Lord *Howard*. It was spoken of as a Grievance, that such a Force and Violence was put upon the City in their Election of Officers, and the Tendency of that as to all Juries.

*Aaron Smith*  
sent into *Scot-*  
*land*.

At our next Meeting, which was in *February*, about a Fortnight after the First, the same Persons met at my Lord *Russel's*, and then we agreed to send a Person to *Scotland*, and Col. *Sidney* proposed to send *Aaron Smith*, and the rest approv'd of him, and the Colonel undertook to dispatch him. About Three or Four Days after, I was to Visit Col. *Sidney*, and he took some Guineas out of his Cabinet; he said, there was Sixty, and he was going to carry them to *Aaron Smith*; and afterwards he told me he had convey'd them to him: About Three Weeks after, the Colonel said, he had heard from him, and he was then at *Newcastle*: After that he told me, he was return'd, and I had appointed to meet with him at Mr. *West's* Chamber, but was disappointed, and never saw him to this Day.

*Att.*



*Att. Gen.* We have done with my Lord Howard, if they will ask him any Questions.

But the Defendant's Council did not think fit to ask any Questions. Page 243.

Then *Sheriff* and *Bell* were call'd to give an Account of *Aaron Smith's* Travelling to *Scotland*. *Sheriff's* Evidence, as to *Smith's* being at *Newcastle*.

*Att. Gen.* Mr. *Sheriff*, Pray give an Account what you know of *Aaron Smith*.

*Sheriff.* I keep the *Black Spread-Eagle* at *Newcastle*; he came to my House about the Middle of *February* last, he stay'd there one Night, and then went Northward towards *Scotland*, as he himself said, and desiring to have one to shew him the Way, I sent for this Man *Bell*, whom he hir'd to go with him while I was by. He return'd to my House Ten or Twelve Days after, and lay at my House another Night, and then went Southwards towards *London*.

*L. C. J.* Did you take exact Notice of the Man?

*Sheriff.* Yes, I saw him before his Majesty and the Council, and it was the same Man that lodg'd at my House; he went by the Name of *Clerk* when he was at my House, and had a Servant with him, who stay'd at my House during the Time of his going Northward; his Man went by the Name of *Richard Langston*.

Mr. *Atterbury* was sworn, to prove, that it was *Aaron Smith* who was shewn to these Witnesses before the Council.

*Att. Gen.* Mr. *Bell*, You had a View of this Man they call *Aaron Smith*, Give an Account when you saw him in the North. *Bell's* Evidence of *Smith's* going towards *Scotland*.

*Bell.* I keep Hackney-Horses at *Newcastle*, and serve Gentlemen as a Guide; Mr. *Sheriff* sent for me to be a Guide to the Gentleman, and we immediately agreed, it was the *Thursday* before what we call *Easter-Eve*, by which we mean *Shrove-Tuesday* with us. We went away next Morning towards *Fadbrough*, but my Horse tir'd, and he order'd me to follow him to *Fadbrough*, which I did, and we stay'd there all *Sunday*. On *Monday* Morning I saw him take Horse, and another Man for his Guide, and I think he said, they went towards *Douglas*; he paid me, and I return'd to *Newcastle*. Page 244.

*Newcastle.* *Jadbrough* is within Six Miles of the *English Border*, and about Forty from *Newcastle*.

*L. C. J.* Did you see the Gentleman at any Time after that.

*Bell.* I saw him at his coming back at *Sheriff's House*, and he made me eat and drink with him, He went by the Name of *Clerk* there, and had a Servant with him, who stay'd at *Newcastle* all the Time he was gone for *Scotland*.

*Juryman.* We desire my Lord *Howard* would name those *Scotchmen* that were sent for.

Lord *Howard.* There was my Lord *Melvin*, Sir *John Cockram*, and one *Campbell*, of my Lord *Argyle's* Name and Family, and another I can't remember.

*L. C. J.* Mr. Attorney, Has my Lord *Howard* his Pardon?

Mr. Attorney, Yes, my Lord.

*L. C. J.* Then your Lordship may be cover'd.

Here Sir *Andrew Foster* depos'd, that the Beginning of last Summer he saw Sir *John Cockram*, Mr. *Monroe*, and Sir *Geo. Campbell* the Son, in Town, and he knows the Father was here too, for he receiv'd several Messages from him; That on the Discovery of the Plot, Sir *John Cockram* absconded, and the Two *Campbells* and *Monroe* were taken into Custody; that he saw a Commission Sir *John Cockram* had to make a Purchase of some Plantations in *Carolina*.

Lord *Howard.* I did omit that Passage: These *Scotch* Gentlemen were to come, under Pretence of carrying on a Plantation in *Carolina*; they were personally known to my Lord *Russel* only, and he was to write the Letter to them, and I suppose did.

Mr. *Atterbury* depos'd, That the Two *Campbells* were taken as they were making their Escape in *Black-Fryars*, and other of the *Scotch* Gentlemen in *Moor-Fields*; that there were Six of them he saw, and that after they had been in Custody Two or Three Months, they were all sent into *Scotland*.

Mr. Attorney. We desire the Record of Col. *Sidney's* Attainder may be Read, to shew how, upon former Tryals upon this Evidence, Verdicts have gone.

Mr.

Sir Andrew Foster deposes the Scotch Agents were in London, and pretended to come about a Purchase in Carolina.

Mr. *Williams*. We are in your Judgment, my Lord, If by Law it may be given in Evidence against Mr. *Hambden*, who is neither Party nor Privy to it, nor Indicted for the same Offence.

Mr. *Attorney*. Let it alone then.

Mr. *Williams*. I am of Counsel for Mr. *Hambden* the Defendant, and take leave to observe, that although my Lord *Howard* has an incomparable Memory, and speaks so very positively in some Things, as to Persons, Times, and Places, yet as to that which is the principal Part of his Evidence, and which most affects the Defendant, and wherein it most concerns us to contradict and disprove him, he is wanting as to that Circumstance of Time: He tells you, in his Relation about my Lord *Shaftsbury*, that he went to him the Day after *Michaelmas-Day*, and is positive to many several Days in that Matter; but as to the Meeting at Mr. *Hambden's* House, he only says it was about the middle of *January*; from whence give me leave to make this Observation, That since he will not be particular to that Time, we apprehend he gives himself a Loose, that we may not meet him to contradict him in that Circumstance. Another Thing I observe on my Lord's Evidence, is, That there is not any one Circumstance, save the Matter of *Aaron Smith*, to confirm what my Lord hath been pleas'd to deliver upon Oath. Nay, there is more than his Observation and Inference, of much of what pass'd in the Company of several Persons, without any concurring Circumstances, to justify or corroborate his Testimony; and that there should be no other Person, who could prove that these Gentlemen, or any of them, were either at the Meeting at Mr. *Hambdens*, or my Lord *Russels*, which is so publick and open a Place, is very strange, if it be true that there were any such Meetings. Then, my Lord says, they discours'd of raising Men, providing Arms, Money, &c. about the middle of *January*; and yet nothing at all appears to be done, tho' there was no manner of discovery of this Contrivance till the *July* after. Another Thing I desire to observe, is, That it appears by my Lord *Howard's* own Evidence, that

A Record of the Conviction of an Accomplice, where the Party is Indicted for a Crime of another Nature, sha'n't be read in Evidence against him. The Defence made by the Defendants Council. Objection that my Lord *Howard* does not swear to a particular Day.

Page 246.

That Concurring Circumstances are wanting to support his Testimony.

That nothing was done in pursuance of these pretended Consults.

That my  
Lord gave  
this Evidence  
in order to  
get his Par-  
don.

Page 247.

That my  
Lord *Howard*  
had solemnly  
declar'd he  
knew nothing  
of the Plot.  
That he had  
own'd my  
Lord *Russel*  
was Innocent  
since the Try-  
al.  
But no Proof  
of this.  
That he had  
said he could  
not have his  
Pardon, till  
the Drudgery  
of Swearing  
was over.

that he was very deep in a Conspiracy against the Government: He tells you, that my Lord *Shaftsbury* and he, were, at *Michaelmas*, contriving Projects to overturn the Government, and raise a Rebellion. And there being a Discovery of this Conspiracy, made by *Keeling*, *Rumsey*, and *West*, it is reasonable to conjecture, my Lord *Howard* began to conceive he must make some farther Discovery of a Conspiracy against his Majesty, if he would obtain his Pardon; and his having since obtain'd his Pardon, confirms it. To have said the same Thing, that was prov'd by three or four Witnesses before him, might not perhaps have avail'd him. And is it not reasonable to believe, that what he hath said, he hath said only for his own Sake; and that he has, by exposing this Gentleman, and the Blood of others, procur'd himself a Pardon.

*L. C. J.* What do you mean by that, Mr. *Williams*? 'Tis a harsh Word, you had need explain your self; as though the King's Pardon were to be procured by Blood.

*Mr. Williams.* I intend no more than that my Lord *Howard* being a Witness against Men, in a Case of this High Nature, and there being other Witnesses before him, it concern'd him to give an home Evidence in the Case, or he could not have expected his Pardon. Another Thing is, how far my Lord *Howard* deserves to be Credited in this Matter, who has declar'd it upon his Honour, and his Religion, that he knew no Persons that were Guilty, or had any Hand in this Conspiracy. He that would speak an Untruth with that Solemnity, is not to be credited when he comes and swears the contrary. Another Matter we have to urge, is, That since the Tryal of my Lord *Russel*, and Col. *Sidney*, he has own'd that my Lord *Russel* was Innocent, and that Col. *Sidney* was Innocent: *But no Proof was ever offer'd of this.* Another Thing that with me has great Weight, is the Atheistical Expressions his Lordship has us'd; *But the Court would not suffer the Witness to be examin'd as to this.* Another saying of my Lord *Howard's*, we shall give in Evidence, is, *That he would not have his Pardon, till the Drudgery of Swearing was over.*

Now



Now that he should call that a Drudgery, which is so manifest a Duty; that giving his Testimony to preserve the King and Government should be a Drudgery, this is but an odd Innuention: I rather take it in this Sense, that my Lord did strain a little, to make his Discovery the more profitable to him. As to that part that concerns *Aaron Smith*, I submit it to your Lordship, how that can any way affect Mr. *Hambden* the Defendant. He does not say that Mr. *Hambden* was concern'd in it, that he named the Man, or any Thing particular as to Mr. *Hambden*, more than that he was in the Company.

Page 248.

That my Lord does not say Mr. *Hambden* sent *Aaron Smith*.

*L. C. J.* And<sup>r</sup> consented to it.

*Mr. Williams.* It must be Silence then, for he does not say that he said any Thing. But as to *Aaron Smith's* going to *Scotland*, it is strange, that a Man that was to agitate such a Concern, should go so publickly with a Servant, and of his own Accord, declare he was going to such a Place in *Scotland*: But I rely upon this point of Evidence, that it is not yet prov'd that *Aaron Smith* was in *Scotland*, or did Agitate any Conspiracy there. And as to the *Scotch* Gentlemen coming into *England*, it does not appear my Client had any Conversation with them, or was ever in their Company. And whereas the Indictment lays the Imputation of Turbulency and Sedition to the Charge of Mr. *Hambden*, we shall shew him to be a Person of a sober Conversation, a retir'd Life, and studious Disposition. That he went into *France* in the Year 80. and staid there till *Michaelmas* was Twelve Month, and was preparing to go into *France* again the beginning of the Summer, with my Lord *Montague*, there to abide for his Health; which will shew the improbability of his being concern'd in any Thing of this Nature. And you will hear some Persons of very great Honour and Quality, as to his Person and Opinions; and then we shall submit it to the Gentlemen of the Jury, &c.

Nor is it prov'd that *Aaron Smith* was in *Scotland*, or that Mr. *Hambden* had any Conversation with the *Scotch* Agents.

That Mr. *Hambden* is not of a Seditious or Turbulent Disposition.

*Mr. Ducas*, Col. *Sidney's* Servant, was Sworn.

He deposed that my Lord *Howard* came to Colonel *Sidney's* House, about Eight Days after the Colonel was Confin'd, and speaking of the Plot, he said,

The Witnesses Depositions to make good the Defence.

Page 249.

said, *God knows I know nothing of it, and I am sure if the Colonel had known any Thing, he would tell me: He said also, That now no Man was safe in his own House, and rather than be a Prisoner, he would do any Thing.*

*Mr. Howard was Sworn.*

He depos'd, that when my Lord *Howard* heard my Lord *Russel* was taken up, he said, *We are all undone.* And I very much fear it is a sham Plot, since they have seiz'd my Lord; and I doubt he is a lost Man. That when Col. *Sidney* was taken, my Lord *Howard* said he was extreamly troubled for him, for he had oblig'd him above all the Men in the World; but he never heard my Lord name *Mr. Hambden*. Nay, he had heard my Lord Five hundred times deny there was any Plot, and said they acted nothing but what was Legal.

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*L. C. J.* What, did he mean the Plot was Legal?

*Mr. Howard.* I had former Discourses with my Lord *Howard*, and ask'd him, What his going up into the City, and making those Meetings, tended to; and he said, We intend nothing but what is Legal? There is not one Man in the Company, that I know of, intends any Thing else.

My Lord *Clare*, and my Lord *Paget*, was Sworn.

My Lord *Clare* Depos'd, that my Lord *Howard* came to see him, and complain'd of the Times, as very sad and dangerous; and said, if ever he was question'd again, he would not plead, but desire them only to count Noses, for the quickest Dispatch was best; and he was confident if he came to Tryal they would have his Life, let him appear never so Innocent; and discoursing of the Primate of *Armagh's* Prophecy, he said, he thought the Persecution was already begun, and he believ'd it would be very sharp, but hop'd it would be short; and then began to wish himself beyond Sea. Then he did with great Affeверations assert Col. *Sidney's* Innocency, but mention'd nothing of *Mr. Hambden* as I remember. This was after Col. *Sidney* was taken, but before my Lord *Howard* was apprehended.

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My Lord *Paget* depos'd, that the 7th of July my Lord *Howard* came to see him, and the Depo-  
nent

nent said he was glad to see him abroad : My Lord *Howard* said, He had been wish'd Joy by several, and he took it ill, because it look'd as if he were Guilty ; but he had behav'd himself so carefully, that he was sure they could not touch him, nor did he know any Thing of any Body else, that he could charge them withal.

Dr. *Burnet* Sworn.

He depos'd, that my Lord *Howard* came to see him the Day after the first Discourse of the Plot, and with a great many Affeверations lifting up his Hands and Eyes to Heaven, protested he knew of none, and believ'd there was none, and spoke of the whole as a Contrivance. That the Deponent was before possess'd with a belief of the Thing, and my Lord *Howard* strove to dispossess him of that Belief, and his whole Discourse ran upon it for an Hour; and that my Lord spoke much of false Witness, and wish'd himself beyond Sea.

Mr. *Recorder*. Dr. *Burnet*, you say you did believe there was a Plot then; pray do you believe it now?

Page 252.

Dr. *Burnet*. I make no doubt as to the Assassination.

Mr. *Gisborn* was Sworn.

He deposed he heard my Lord *Howard* say, he believ'd nothing of the Plot, the *Saturday* before he was taken into Custody.

Mr. *Blake* was Sworn.

He depos'd that my Ld *Howard* shew'd him a Warrant he had for his Pardon the last *October*; and that the Deponent telling him he thought it of no Avail, without he had his Pardon under Seal; my Lord reply'd, he had it not yet, and he could ascribe it to no other Reason, but that he must not have it till the Drudgery of Swearing was over.

One *Mercer* was call'd, to prove my Lord *Anglesey* was serv'd with a *Subpœna*.

Mr. *Williams*. My Lord *Anglesey* is ill of the Gout : We hope your Lordship will give us leave to prove what my Lord *Howard* has said to my Lord *Anglesey*.

Hear-say Evidence not to be allow'd.

L. C. J. No certainly, Mr. *Williams* : Will you consent that what the Duke of *Monmouth* has said, shall

shall be given in Evidence, and then I presume the King's Council will consent to your Request.

Mr. *Williams*. Here is my Client in Court, I can consent to nothing.

L. C. J. You know the Law, why should you offer these Things, unless it be to make the *Lay gens*, who are ignorant of the Law, think the Court put Hardships upon People, in denying Things, which you that understand the Law, know cannot be granted.

Page 253. Then my Lord *Paget* was call'd again to testify as to Mr. *Hambden's* Character. He deposed that he had known Mr. *Hambden* a great while, and always believ'd him a Man of Honour and Virtue; that he lov'd his Study, and a Contemplative Life, and therefore could not believe he was ingaged in any such Design. That he was not of a Turbulent Seditious Spirit, but a Peaceable Man, of little Acquaintance, and not desirous to make much; and that he never heard him express any Dissatisfaction as to the Government.

Mr. *Pelham* was Sworn.

He deposed he liv'd near Mr. *Hambden*, and had been acquainted with him five or six Years; that he was much addicted to Study, kept at Home, and had but little Acquaintance; and that he never found him of a Turbulent Disposition.

The Bail can't  
be Evidence  
for the De-  
fendant.

Sir *Henry Hobart* was call'd, but was objected to as a Witness being Bail for the Defendant.

L. C. J. If he be one of his Bail, that he shall appear in this Court the first Day of this Term; and so from Day to Day till he shall be discharg'd, and Remains under that Recognizance he cannot be a Witness.

Mr. *Attorney*. But they mistake the Matter; He was then charg'd with this Indictment: He then pleaded to it, and was bail'd to answer the Indictment; and surely in that Case he cannot be a Witness. Here is the Person principal. Will they render him in Custody, and we will discharge the Bail.

Mr. *Williams*: We will change the Bail, and find another sufficient Person rather than lose our Witness.

L. C. J.



L. C. J. But you must Render him first, and change the whole Bail. They must enter into new Recognizances.

Mr. Williams. I doubt we can't do that because they are not all here.

Mr. Attorney. Since they say he is a material Witness; I will consent to let him be sworn.

Sir. Henry Hobart was sworn.

He depos'd that he had known Mr. Hambden about ten Years, and that he was very far from a turbulent Disposition, and always express'd a great esteem for the Government. That he went over into France in November 1680, and remain'd there till September 82, and that the Deponent was with him there great part of the Time; That last March, Mr. Hambden told him, he design'd to go over again to establish his Health; that he and Mr. Montague design'd to go together, and take their Ladies with them, and that Mr. Montague was since gone.

Mr. Attorn. Did you never hear him complain of the Administration of the Government?

Sir Henry Hobart. No, Sir.

Dr. Lupee was Sworn a Witness, and Sir Henry Hobart Interpreter.

Dr. Lupee depos'd, That the Two Years he liv'd with Mr. Hambden, he observ'd him to be very studious, and his Inclinations virtuous, that he express'd a great Respect for his Prince, and for the Laws of his Country; and that discoursing of the late Popish Plot, he said, He was ready to Sacrifice his Life and Fortune for the King's Service.

Mr. Thomson. Ask him what Discourse he had with Mr. Hambden, since the Plot broke out.

L. C. J. Will that be Evidence, do you think, Mr. Thomson? Will the Defendant's Declaration of his Innocence, who is the Party accused be any Evidence; But ask him what you will.

Then Lupee, further depos'd, that meeting a Savoyard Minister in Long-Acre, this Minister ask'd him if Mr. Hambden were not concern'd in the Plot, that the Deponent went and told Mr. Hambden of it, and acquainted him that the Duke of Monmouth and my Lord Grey were hid;

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M

and

But the King's Council Consent to Permit it. Page 254

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What the Defendant had said, no Evidence for him.

But the Court admit such Evidence to be given.

and that thereupon Mr. *Hambden* said, I will never Fly, nor Conceal my self, for my Conscience Reproaches me in nothing.

*Monsieur Instell* was Sworn.

He depos'd that Mr. *Hambden* acquainted him with his design of going to *France* with Mr. *Montague*, a Month before the Plot broke out, that he employ'd the Deponent to procure him *French* Servants, and mention'd some Books he design'd to carry with him.

*Dr. Needham* was Sworn.

*Mr. Williams.* We call him to prove that Mr. *Hambden*, my Lord *Essex* and the rest of the Gentleman accused, had a very mean Opinion of my Lord *Howard*.

What a 3d  
Person has  
said not to be  
given In  
Evidence.

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*L. C. J.* If you will prove Mr. *Hambden's* Opinion, you may, but you must not bring Proof of what my Lord *Essex*, a third Person, thought of my Lord *Howard*. You have offer'd two or three Things to Day, that you know are not Evidence. I would not have it thought that we deny you, or your Client, any thing that is according to the Course of Law, but Mr. *Attorney* has gratified you, in waving Three or Four Things already, but nothing will satisfy, unless we break the Course of other Tryals.

*Mr. Williams.* I offer it as Evidence, that it is unlikely there should be such a Consultation as my Lord *Howard* mentions, because my Lord *Essex* had so mean an Opinion of my Lord *Howard*, that he would never Consult with him about any matter.

*L. C. J.* Is not the record of the Conviction of my Lord *Russel*, and Col. *Sidney*, who were convicted on my Lord *Howard's* Testimony, more to support his Credit, than a Report of a third Person is to Impeach it, and yet we say, it is no Evidence in this Case, and Mr. *Attorney* wav'd it.

*Mr. Williams.* Then I will not press it my Lord.

*L. C. J.* It seems my Lord *Essex* had such an Opinion of my Lord *Howard's* Evidence, that he Cut his own Throat upon it.

One *Murry* was call'd to give an Account of my Lord *Howard's* Atheistical Discourses.

Mr. *Attorney*. How can my Lord *Howard* be prepar'd to give any Answer to this.

Lord *Howard*. This presses hard upon my Reputation, and I profess, before God, I do not know this Fellow, I never saw him in my Life, who is this Rascal they bring here; I would fain have this Fellow dare to say this any where else.

L. C. J. To rake into the whole Course of a Man's Life is very hard.

Mr. *Williams*. Well my Lord we will wave it.

Mr. *Justice Withins*. You know the Case adjug'd lately in this Court, a Person was Indicted of Forgery, and we would not let them give in Evidence, any other Forgeries, but that for which he was Indicted, because we would not suffer any Raking into Mens course of Life, to pick up Evidence that they can't be prepar'd to Answer.

Here the Evidence ended, and the Council on both sides agreed to make no Observations on the Evidence, but leave it to the Court.

L. C. J. " It has been hinted by the Council  
" on both sides, that some of the Witnesses on  
" each side have been Subpcen'd, and are not here,  
" from which they make different Inferences :  
" It seems by the Proof, that there was a meet-  
" ing of Six Persons, the Duke of *Monmouth*, the  
" Lord *Howard*, the Lord *Russel*, the Earl of *Es-*  
" *sex*, *Algernon Sidney*, and Mr. *Hambden*. My  
" Lord *Essex* is gone to his long Home, my Lord  
" *Russel* and *Sidney* have been Executed; and, say  
" they, that are for the King, we produce my Lord  
" *Howard*, and we have taken all the Care we can  
" to summon the Duke of *Monmouth* : I presume  
" they mean, that they have done this in order to  
" show the fairness of their proceeding, for it has  
" been a matter that has obtain'd a sort of Belief in  
" the World; as tho' the Duke of *Monmouth* had  
" denied that there was any such Thing as this Con-  
" spiracy. And, say they, to show we are not afraid  
" to have the Truth come out, we have done as  
" much as in us lay to get this Person hither. On the  
" other side, the Council for the Defendant say, we

The Person who wou'd have attested some Atheistical sayings of my Lord *Howard's* not suffer'd to be examin'd.

In an Indictment for Forgery. Another Forgery shall not be given in Evidence.

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The Council on both sides leave it to the Court to make Observations on the whole.

Page 258. " have taken all the Care we could to bring my Lord  
 " *Anglesey* hither to be a Witness for the Person  
 " Indicted, but he is afflicted with the Gout, and we  
 " can't have him here; and so they shew they have  
 " been very zealous to vindicate their Reputation,  
 " but were disappointed. These Two Things are  
 " made use of against the Defendant one Way, and  
 " for him another: But here you are to take No-  
 " tice, That whatsoever has been said or offer'd by  
 " the King's Counsel on the one Side, or the Coun-  
 " sel for the Defendant on the other, you must  
 " not take into your Consideration at all, any fur-  
 " ther than as their Allegations are supported by  
 " the Testimony that has been given.

Then my Lord repeated the Evidence that had  
 been given for the King, and proceeds to answer the  
 Objections the Defendant's Council had made to it.

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Says he, " Mr. *Williams* has made a great many  
 " Objections against my Ld. *Howard*; for if he  
 " could shake his Testimony, he might easily bring  
 " off his Client; he objects, that my Ld. *Howard*  
 " was very deep in the Conspiracy with my Lord  
 " *Shaftesbury*, by his own Acknowledgment, and  
 " he might do much to get himself out of Dan-  
 " ger of that Plot, and to procure his Pardon:  
 " It is very strange it should be an Objection be-  
 " fore he had his Pardon, that he did it for Fear,  
 " and to get his Pardon; and now he has it, *that*  
 " is an Objection too; for, say they, he got it by  
 " this Means: Before he had it, he was under a  
 " Fear of not obtaining it, till the Drudgery of  
 " Swearing was over; But now he has his Pardon,  
 " What now? Why he does it on Purpose to ac-  
 " cuse other People. Now, if after he is pardon'd,  
 " when he is under no Dread or Fear, he says the  
 " same Things that he did when he might be in  
 " Fear, Is it not a plain Answer to the Objection  
 " of his Fear. There might be an Umbrage of  
 " an Objection before he had his Pardon, (tho' it  
 " was indeed none; not a Rational and Weighty  
 " one to set aside his Testimony:) But no body  
 " knows which way to satisfy some People:—

Page 262.

" In the next Place says Mr. *Williams*, You are  
 " not positive as to the Time; you remember the  
 " par-



“ particular Day when you talk'd with my Lord  
 “ *Shaftsbury*, but are not so particular as to the o-  
 “ ther. Now, the Pressure my Lord *Shaftsbury*  
 “ complain'd of was this, says he, *They have got the*  
 “ *Juries into their own Power, and no Man is safe;*  
 “ *they will find me or any Man guilty, as they please.*  
 “ Now, this was by having the Sheriffs they had a  
 “ Mind to, for they return all Juries, and these  
 “ Sheriffs are always Sworn the Day before *Mi-*  
 “ *chaelmas-Day*, and he had very good Reason to  
 “ remember such a Notorious Day, whereon so  
 “ remarkable a Thing happen'd, and what so much  
 “ concern'd them; but it is not so easy to speak  
 “ to a particular Time in the Middle of a Month,  
 “ where there is not such a material Circum-  
 “ stance.

“ Then he says, Here was a Discourse of Arms  
 “ and Armed Men, and a great Sum of Money,  
 “ but there breaks out nothing of this Matter till  
 “ *July* following, and the Debate was in *January*  
 “ and *February* before; for this Matter, the Answer  
 “ is plain, That they were to conciliate a Corre-  
 “ spondence with People Abroad, and that they  
 “ could not go on till they had effected that: You  
 “ hear the *Cockrams* and *Campbells* came not to  
 “ Town till *June* or *July*, so that it was not pro-  
 “ bable it should break out till then, because it was  
 “ to be agitated on their coming here. And there-  
 “ fore my Lord *Howard* thinking it would be a  
 “ Work of Time, went to his Country House, and  
 “ afterwards to the *Bath*, and took his Pleasure in  
 “ the mean while,

“ As to the Objection, that my Ld. *Howard* was  
 “ oblig'd to go further than the other Witnesses,  
 “ (who had been before-hand with him) in order  
 “ to merit a Pardon, and that Mr. *Hambden* was  
 “ not thought of at first; Every body knows the  
 “ Plot was divided into different Branches, some  
 “ were to manage the Assassination, and others the  
 “ Rising, and that the other Witnesses who were  
 “ concern'd in the Assassination, knew nothing of  
 “ these Consults concerning an Insurrection. Then  
 “ they bring several Witnesses who depose, That  
 “ my Lord *Howard* has declar'd solemnly, he knew

Page 263. " nothing of a Plot; and Mr. *Howard* says, he-  
 " verr'd they had done nothing but what was Le-  
 " gal. Now, when once People come to believe,  
 " that the Raising of Tumults, and the making Se-  
 " ditious Stirs and Noises, is a Legal Way to ob-  
 " tain their Ends, as we know 'tis the Tenet and  
 " Principle of a great many People, What will  
 " they not do, under a Pretence, that all they do is  
 " according to Law? They think it lawful, by the  
 " Religion they profess, to Resist and Oppose the  
 " Government, and the *Old Cause* is a *good Cause*,  
 " to this Day, in some Mens Opinions, and they can  
 " die in it, and thank God for being concern'd in  
 " it; and they call themselves Protestants. But if  
 " Men will thus make Insurrections to distress the  
 " Government, it is rank Treason and Rebellion,  
 " and no Man can justify it, let him pretend Con-  
 " science or what he will. Was it not under a  
 " Pretence of Religion that King *Charles I.* was  
 " brought to the Block. And I have heard of some  
 " Men who were enagag'd against him, finding the  
 " King did prevail in the Beginning of the War,  
 " because he had Gentlemen of Quality and Spirit  
 " to appear for him; they advis'd the Heads of  
 " the Party to make Religion the Pretence for  
 " the War, and then their Followers would run  
 " headlong to what they would have them.

Page 264. " As to what Mr. *Blake* swears, That my Lord  
 " *Howard* said he could not have his Pardon till the  
 " Drudgery of Swearing was over: Possibly it  
 " might be uneasy to him to come over and over  
 " again to tell the World such a Story, and give  
 " such an Account of himself. It must a little  
 " grate upon him, tho' it be his Duty, to tell the  
 " Truth: For if I have any Ingenuity, and have  
 " liv'd in good Credit in the World, it must be a  
 " Drudgery and irksome Thing to call my self a  
 " Traitor so often in a Court of Justice. It is  
 " true he might have given it a more moderate  
 " Term, and yet withal, upon these Circumstan-  
 " ces, he might have Reason to call it in some  
 " Sense a Drudgery. But now, Gentlemen, as he  
 " did swear before he had his Pardon, from Time  
 " to Time, upon all Occasions, when he was call'd  
 " to

" to be a Witness; so now the Pardon is come,  
 " which they would have to be the Reason of the  
 " Continuance of this Drudgery, still he swears  
 " the same Thing; Now, his Pardon does not at  
 " all influence his Testimony, he is not under any  
 " Fear, but is as free as any Subject the King has,  
 " and now he gives you upon his Oath, the same  
 " Account as he did at the Tryal of my Lord *Ruf-*  
 " *fel* and Col. *Sidney*.

" As to the peaceable Disposition of Mr. *Hamb-*  
 " *den*, of which so many have testified, it may not  
 " withstanding be observ'd from the Evidence of  
 " one of them (*Lupee the Frenchman*,) That there  
 " was some Jealousy of him in the World, and  
 " that he lay under hard Censures as well as other  
 " People. For, speaking of the Plot, the Advice  
 " given him was this, My Lord *Grey* is gone, and  
 " the Duke of *Monmouth* is gone, Why won't you  
 " go? Why should that Advice be given him if  
 " there was no Suspicion of his being concern'd?  
 " As to his saying *I will not go*, which they would  
 " give as a Proof of his Innocence, there was the  
 " same Innocence in my Lord *Russel* and Col. *Sid-*  
 " *ney*, and all the Six, except the Duke of *Mon-*  
 " *mouth*, and he indeed did abscond. We know no  
 " Reason that they had to stay and be taken, any  
 " more than *West* or *Rumsey*, and yet that is not u-  
 " sed by them as an Argument of their Innocence.  
 " As to the Defendant's Intentions of going A-  
 " broad again, It is much he did not put them in-  
 " to Action in all this Time: He came over at an  
 " unlucky Time, when the City was in a Distem-  
 " per, and Men were fill'd with Fears and Jeal-  
 " ousies, and these might animate and inspirit  
 " him, as they did other People: It had been much  
 " for his Advantage he had never come out of  
 " *France*, or that he had return'd thither sooner.  
 " As to my Lord *Howard's* denying there was  
 " a Plot, I am apt to believe what those Gentle-  
 " men testify, but is it to be suppos'd, that a Man  
 " who was Guilty of High Treason, would pro-  
 " claim his own Guilt? Is it reasonable to ima-  
 " gine he would tell Dr. *Burnet*, that he and Col.  
 " *Sidney*, and Mr. *Hambden*, were in a Plot, and  
 " make

“ make it common Talk. His Protestations are  
 “ so far from being an Argument of his Innocence,  
 “ that they are rather an Argument of his Guilt;  
 “ if he had not been concern’d in the Business,  
 “ and free from Suspicion, Why should he tell  
 “ Col. *Sidney’s* Footman, and this and t’other,  
 “ Man, *I know nothing of the Plot, and neither I,*  
 “ *nor any other Man, I am sure is concern’d in it?*  
 “ This Over-Caution is an Intimation, that there  
 “ was something more than ordinary in the Mat-  
 “ ter: We take Notice of such Circumstances, as  
 “ a great Evidence against a Man who is accus’d  
 “ for a Highway-man; so that the Argument will  
 “ turn the other Way: And ’tis more for the Ad-  
 “ vantage of those worthy Gentlemen, that it  
 “ should be turned the other Way, for otherwise  
 “ they would be thought to be Persons ill affected  
 “ to the Government, that is, Dr. *Burnet*, my  
 “ Lord *Paget*, my Lord *Clare*, and the rest. And  
 “ if they have a Mind to be thought otherwise,  
 “ they must let the Argument run that Way, as I  
 “ say, and in Charity, we ought to believe the best  
 “ of all Mankind, till we find otherwise by them.  
 “ We say then in Charity; We suppose he thought  
 “ it not fit to intrust you with his Confessions,  
 “ I know it is the best Argument that can be  
 “ given, and that which they ought to value them-  
 “ selves upon, for their own Credit and Reputa-  
 “ tion, and not make it an Argument against my  
 “ Lord *Howard*, or against the Credibility of his  
 “ Testimony in the Matter. I don’t know, Gen-  
 “ tlemen, that I have omitted any one Thing that  
 “ is material; I shall only repeat it to you, That  
 “ this is a Matter of great Consequence, wherein  
 “ the Peace and Government of the Kingdom is  
 “ concern’d to a very high Degree: A Matter,  
 “ that if there were another Witness as positive  
 “ against the Defendant as my Lord *Howard*,  
 “ would amount to no less than High Treason.  
 “ But as there is but one Witness, back’d with  
 “ these Circumstances, to corroborate his Testi-  
 “ mony, ’tis but only a Trespass, but I tell you it  
 “ treads very nigh upon High Treason, and the  
 “ Tendency of it was to bring us all into Confu-  
 “ sion,



“ sion, and lay us open to the same Mischiefs we  
 “ were under in the Times of the late Rebellion:  
 “ For though Men pretend never so fair, and veil  
 “ it under the Names of *The Security of the Go-*  
 “ *vernment and the Protestant Religion*, yet they  
 “ would have done well to have tarried till they  
 “ had a Legal Authority to call them to Consult of  
 “ these High Matters, that they pretend to secure.  
 “ What had these Gentlemen to do, to take upon  
 “ themselves this Power without Authority?

“ Upon the whole Matter, my Lord *Howard*  
 “ has positively sworn the Matter of Fact charg’d  
 “ in the Indictment; he has been supported by the  
 “ Witnesses that confirm the Circumstances of  
 “ *Smith’s* going into *Scotland*, the *Scotch-Men’s* be-  
 “ ing here, and the sham and cant of *Carolina*. All  
 “ which you have heard and observ’d, and is not  
 “ contradicted by any Thing I hear, that carries  
 “ any probability of an Answer. Therefore I leave  
 “ it to you, whether, &c.

Then the Jury withdrew, and within half an  
 Hour return’d, and brought the Prisoner in *Guilty*.  
 Which Verdict being Recorded, the Court arose.

Page 266.  
 The Defen-  
 dant is Con-  
 victed.

*Martis 12 Februarii 1683. B. R.*

Mr. *Attorney* pray’d Judgment against the De-  
 fendiant, and that the Court would set a good Fine  
 upon him, and that he might find Sureties for his  
 good Behaviour during Life.

Mr. *Williams*. I shall not stir any Thing as to  
 the Indictment or the Verdict, but all I have to  
 say for him, is this; Mr. *Hambden* is but Heir  
 apparent, his Father is alive: So that though he  
 has the Prospect of an Estate, he has but little in  
 Possession. And your Lordship knows, *Magna*  
*Charta* says, there should be a *Salvo Contenemento*  
 in all Fines.

L. C. J. I cannot tell what his Estate is, but  
 Mr. *Williams* knows very well, that the Crime, in  
 Conscience, as well as Law, in Case it had been  
 prov’d by two Witnesses, would have wrought a  
 Forfeiture of his Estate and Life too, and corrupt-  
 ed his Blood. So that it certainly deserves a very  
 great

*Salvo Contene-*  
*mento in Magna*  
*Charta*, is  
 meant of A-  
 mercements,  
 not of Fines.

great Punishment, if we could impose one adequate to its Desert.

*Just. Withins.* It was Amercements that were spoken of in *Magna Charta*.

*L. C. J.* Ay; It was never meant of Fines for great Offences.

Page 267.

*Mr. Hambden.* I have nothing but for Life, and that is but little neither.

*Just. Withins.* I know not what it is truly, but whatever it is, we are to look after the proportioning the Punishment, as near as we can, to the Offence.

My Lord and the Court, have consider'd of the Matter, and think fit to give this Judgment.

Judgment against him to pay a Fine of 40000 l.

*They set the Fine of Forty Thousand Pounds upon you, to be paid to the King, and you must be Committed till you pay it.*

*L. C. J.* And that you find Sureties for your good Behaviour during Life.

*Att. Gen.* I pray he may be Committed for his Fine.

*L. C. J.* Let it be so. *Mr. Hambden*, if you will apply your Self to the King, you may, and there, perhaps, you may find Mercy: We must, according to the Duty of our Places and Oaths, give such Judgment as the Law requires.

*Mr. Williams.* My Lord, I pray his Bail may be discharg'd.

*L. C. J.* His Bail is discharg'd, he being Committed.

*Mr. Williams.* And for the High Treason, he is discharg'd by the *Habeas Corpus* Act.

*L. C. J.* He is so, for there is no Prosecution:

Then *Mr. Hambden* was carried away Prisoner by the Marshal.

The

*The Tryal of LAURENCE BRADDON and  
HUGH SPEKE, Gent. at the King's  
Bench Bar, upon a v Information exhib-  
ited against them by his Majesty's At-  
torney General, for a n High Misdemean-  
our, 7 Feb. 36 Car. II. 1683.*

“ **T**HE Information sets forth, That whereas *Arthur* late Earl of *Essex*, the 12th of *July*,  
“ in the 35th Year of the King, was committed  
“ to the Tower of *London*, for certain Treasons  
“ supposed to have been committed by him; and  
“ that on the 13th of *July*, in the Year aforesaid,  
“ he did Feloniously Kill and Murther himself  
“ there, as by an Inquisition taken before *Edward*  
“ *Fernham*, Esq; then Coroner of the Tower Li-  
“ berty, might more fully appear. The Defen-  
“ dants, *Laurence Braddon* and *Hugh Speke* not be-  
“ ing ignorant of the Premisses, but designing to  
“ bring the Government into Hatred and Con-  
“ tempt, the 15th Day of *August*, in the Year  
“ aforesaid, at the Parish of *St. Clements Danes*, in  
“ the County of *Middlesex*, did maliciously con-  
“ spire to make the King's Subjects believe, that  
“ the Inquisition aforesaid was unlawfully taken: and  
“ that the said Earl of *Essex* did not Murder him-  
“ self, but was Murder'd by some Persons un-  
“ known, to whose Custody he was committed,  
“ And it further sets forth, that the Defendants,  
“ *Laurence Braddon* and *Hugh Speke*, designing to  
“ disturb and disquiet the Minds of the King's Sub-  
“ jects, and to spread false Reports, did conspire to  
“ procure certain false Witnesses to prove that the  
“ Earl of *Essex* was not *Felo de se*, but was Mur-  
“ der'd by some Persons unknown; and to induce  
“ other the King's Subjects to believe these Re-  
“ ports, did maliciously declare in Writing, That  
“ the said *Laurence Braddon* was the Person that  
“ did prosecute the said Earl's Murder. And that  
“ this was to the great Scandal of the Government,  
“ against the King's Peace, &c.

Page 268.  
The Informa-  
tion for Con-  
spiring to  
make People  
believe the  
Earl of *Essex*  
was Murder'd  
by those to  
whose Custo-  
dy he was  
committed,  
and for procu-  
ring False-wit-  
nesses to prove  
it.

To

To which Information the Defendants had severally pleaded *Not Guilty*, the preceding Term.

The Jurors being call'd over, and the Defendants making no Challenges, a Jury was sworn. Then Proclamation was made for Evidence, as usual, and Mr. *Dolben* open'd the Information; and Mr. *Attorney* open'd the Nature and Course of the Evidence.

Page 269.  
Warrant to  
commit the  
Earl of *Essex*  
for High  
Treason.  
The Coro-  
ner's Return  
of the Inqui-  
sition that  
the Earl cut  
his own  
Throat.

Page 270.

Then Mr. *Reynolds* was call'd, who produc'd the Warrant for the Commitment of the Earl of *Essex* to the Tower for High Treason, by Sir *Leolin Jenkins*, one of the Secretaries of State; And the Clerk of the Crown read the Inquisition that was taken before *Edward Farnham*, Esq; Coroner for the Liberty of the Tower; whereupon it was found, that the said *Arthur* Earl of *Essex*, on the 13th of *July*, in the 35th Year of the King, about Nine a Clock in the Forenoon, being alone in his Chamber in the Tower, did feloniously cut his Throat with a Razor, from one Jugular Vein to the other, of which Wound he instantly died, &c. This Inquisition was taken the 14th of *July*, in the Year abovesaid.

Mr. *Evans* was Sworn.

*Evans* deposes  
that *Edwards*  
reported the  
Earl was Mur-  
der'd.

Page 273.

He deposed that he was at the *Custom-House* about Eleven a Clock that Morning the Earl of *Essex* cut his Throat; and that *Edwards* a *Custom-House* Officer reported there, that he had heard from Home, that his Son saw a Hand throw a Razor out of the Earl of *Essex*'s Window that Morning; and that *Edwards* came to him again in the Afternoon, and told him he had examin'd into the Matter, and his Boy confirm'd the Truth of it.

Page 272.

That the *Monday* after my Lord *Essex*'s Death, the Deponents Brother, Mr. *Halsell*, came down along with Mr. *Braddon* to the Deponent's House, at *Wanstead* in *Essex*. That his Brother *Halsell* produc'd a Printed Paper, being an Account of the Coroner's Inquest, which the Deponent read; and observ'd to the Company, that this Printed Account differ'd from what Mr. *Edwards* had told him upon the *Custom-House* Key, that Morning my Lord *Essex* cut his Throat; for *Edwards* had told him, that



that his Son saw the Razor thrown out of the Window, and the Paper said it was found lying by him.

That afterwards the 17th of July, Mr. Edwards and Mr. Braddon came to him at Smith's Coffee-House by the Custom-House; and Mr. Edwards told the Deponent that Mr. Braddon had been at his House, and examin'd his Son concerning the Report of the Razor, that was thrown out of the Window of the Earl of Essex's Lodging that Morning he cut his Throat. That the Deponent reply'd, he had read the Coroner's Inquest, and it appear'd otherwise there, and therefore desir'd they would discourse no more of any such Matter. That he intreated Mr. Braddon to forbear meddling in any such Thing, for Mr. Edwards was a poor Man, and had divers Children, and might be ruin'd; and that he himself might be ruin'd if he proceeded farther in it.

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Page 271.

That this Story of Mr. Edwards's Boy was common Discourse; and that Edwards told it to a whole Coffee-House of People, as well as to the Deponent.

Page 273.

Mr. Edwards was Sworn.

Sol. Gen. Pray tell what you know of Mr. Braddon's coming to your Son, and what Discourse he or you had about the Murder of the Earl of Essex?

Mr. Finch.

Page 274.

Mr. Edwards. The Report of the Boy the 13th of July about Ten a Clock, as I was inform'd by my Family, and by the Boy afterwards, by Word of Mouth, was this. He came in about Ten a Clock, says he, I have been at the Tower (to one of his Sisters) and have seen his Majesty and the Duke of York, and the Earl of Essex has cut his Throat, and I see an Hand throw a Razor out of the Window; and one came out of the House, a Maid or Woman in a White Hood and a Stuff Coat, and took it up, and went in again; and then I heard a Noise, as of Murder, cry'd out.

Edwards depo-  
ses his Boy re-  
ported he saw  
a Razor  
thrown out of  
the Window.

L. C. J. This was your Son, was it not?

Mr. Edwards. Yes, the younger of them. The two Boys were that Morning going to Merchant-Taylors School together, as they us'd to do; and by the way, hearing the King was in the Tower, this younger Boy, that was well acquainted with the

Sir George Jef-  
feries.

the Tower, gave his elder Brother the slip, and went into the Tower, and rambled about from Place to Place.

*Sir Robert  
Sawyer.*

*Att. Gen.* Did not you examin him?

*Mr. Edwards.* Ay, I did examin him.

*Att. Gen.* Did not you find that he deny'd it again?

*Mr. Edwards.* No, I did examin him, and I found no denial of any Thing at all that he had reported, till Mr. Braddon came to make Inquiry. As soon as he came to make the Inquiry, and I understood what Mr. Braddon's Business was, I beg'd of him that he would not insist upon it by no means; I beg'd of him, as if I had beg'd for my Life, but he was so zealous in the Business, that nothing would satisfy him. And after I had told Mr. Braddon, that which I could not deny, which was the Boy's Report, I left him, and went down to the Custom-House, and some of my Family discours'd the Boy at that rate, that he began to deny it; and in less than half an Hours Time recollected himself, and began to own it again: And so the Boy was off and on till the time he was before the Council; and to this Day he seems to stand in the Denial, whether he will do it now or no, I can't tell.

*Att. Gen.* Did you acquaint Mr. Braddon, that you had found this Boy to be a lying Boy, and detected him in Lies several times.

*Mr. Edwards.* May it please you, Sir, I acquainted him with thus much: Said I, Mr. Braddon, as I have dealt ingenuously with you, to let you know what the Boy's Report was, so I must likewise tell you, that I cannot, nor will undertake to assert the Truth of it; and presently, upon that, my Daughters told me the Boy had many times excus'd his playing Truant, by false Stories.

*Justice Halloway.* Pray, did Mr. Braddon tell you why he was so Inquisitive about this Razor, and the Report of the Boy?

*Mr. Edwards.* He told me, it was out of Conscience.

*Att. Gen.* Did you understand he had taken your Boy out in a Coach?

Mr.

Mr. *Edwards*. Never, till he carried him into his Majesty's Presence, before the Council; and I knew not that till the Boy came home.

Mr. *Thomson*. What Day was it your Boy reported this Story of the Razor?

Mr. *Edwards*. The 13th of *July*, that Day the Earl of *Essex* cut his Throat.

Mr. *Thomson*. How many Days was it after that Mr. *Braddon* came to you?

Mr. *Edwards*. It was not till the 17th of *July*.

Mr. *Thomson*. Had you discours'd of this before Mr. *Braddon* spoke to you? Page 275;

Mr. *Edwards*. Yes, I believe I had.

Sol. Gen. Had you discours'd it before your Boy told you?

Mr. *Edwards*. I should then indeed have been the Contriver of the Story.

Att. Gen. So it is like enough you were.

L. C. J. Did not you tell it before you came Home?

Mr. *Edwards*. About Ten a Clock, I having heard the News of the Earl of *Essex*'s cutting his Throat, at the *Custom-House*, I step'd Home, being very near to my own House, and as soon as I came in at the Door, the Family began to give me an account what News the Boy brought in.

That was the first time I heard of it, and I did not discourse of it till after that.

L. C. J. Let Mr. *Evans* come in again. Did he tell you this Story as if he had been at Home?

Mr. *Evans*. No, I think it was, that he had it from home by some Hand or other. And at Two a Clock in the Afternoon, when he came again to the *Custom-House*, he told us he had been at Home, and the Boy had told him the same Story.

Mr. *Edwards*. My Family can testify I was at Home between Ten and Eleven a Clock.

Mr. *Evans*. To the best of my remembrance, he told me he heard it from Home the first time.

L. C. J. Mr. *Edwards*, Did you tell *Evans* you had Notice from home of such a Report, or no?

Mr. *Edwards*. I did not tell him any Thing before I had been at home; and then I told him I had it

it from my Family, who told me the Boy had made such a Report.

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*L. C. J.* What did you tell Mr. *Evans* after Dinner.

*Mr. Edwards.* It's probable I might tell Mr. *Evans* the same Story after Dinner.

*Mr. Evans.* He said he had examin'd his Boy, and he said the same thing, that he told us, he had heard in the Morning.

*Sol. Gen.* Mr. *Edwards*, did Mr. *Braddon* tender any Paper to your Son to Sign?

*Mr. Edwards.* I was inform'd he did so, but I saw him not do any such Thing.

*Sol. Gen.* Did you never say Mr. *Braddon* had tender'd such a Paper to your Son?

*Mr. Edwards.* I do not believe I ever did say so.

*Sol. Gen.* Pray recollect your Memory, and tell us whether you did or not?

*Mr. Edwards.* I thank God, Sir, that he has given me my Memory and Understanding, I bless him for it.

*Att. Gen.* But it were well if thou hadst Honesty too.

*Mr. Edwards.* And Honesty too, Sir; I have not liv'd these Thirty Nine Years at the *Custom-House* without Honesty. I never had my Honesty question'd to this Day.

*Sol. Gen.* Did your Son refuse to Sign that Paper?

*Mr. Edwards.* He did Sign it at last; he did not tell me he refused to Sign it.

*L. C. J.* Thou dost prevaricate very strangely, notwithstanding thy Reputation of Thirty Nine Years Honesty. Prithee answer plainly, Did you hear at any Time, that your Son had refused to Sign it?

*Mr. Edwards.* No, my Lord, I did not, to the best of my Remembrance.

*Att. Gen.* Did Mr. *Braddon* ever tell you he had other Evidence besides your Son?

*Mr. Edwards.* I do not remember he said any such Thing at his first coming.

*L. C. J.* How thou dost shuffle again, answer plainly?

Mr.



*Mr. Edwards.* He did say so afterwards.

*Sol. Gen.* Did he tell you that he had other Evidence besides your Son, before he sign'd the Paper or after?

*Mr. Edwards.* It was before, as I take it. I speak to the best of my Knowledge, my Lord, I can say no more.

*Mr. Freke.* Did you ever know *Mr. Braddon* before the 17th of July, or did you ever see him before?

*Mr. Edwards.* No I never had any Knowledge of him, nor ever heard a Word of him.

*William Edwards,* the Boy was call'd.

*Mr. Edwards.* I charge you in the presence of Almighty God, speak Truth Child, be sure to say nothing but the Truth.

*L. C. J.* And, Child, turn about, and say Father, be sure you say nothing but the Truth.

It being demanded, What Age he was of, he said Thirteen. And after being charg'd by the Court to speak nothing but the Truth, he was admitted to be Sworn.

*L. C. J.* Look upon that Paper Child: didst thou put thy Name to that Paper.

*William Edwards.* *Mr. Braddon* ask'd me, whether I saw any Thing at the Tower, and I told him yes, I was in the Tower and saw a Razor thrown out of a Window, I afterwards went with my Brother to the Tower, and I show'd my Brother the Place, and *Mr. Braddon* writ this down after I had told it him in our Parlour, and he read it to me when he had done.

*L. C. J.* Didst thou not refuse to put thy Name to it.

*William Edwards.* Yes, I was afraid of coming into danger.

*L. C. J.* Why, what danger could there be if it was Truth.

*William Edwards.* That was not the Truth which I had told him.

*Mr. Solicitor.* How didst thou come to sign it afterwards then.

*William Edwards.* He perswaded me, and said there was no harm in it, and he would have had my Aunt sign'd it.

*Edwards the Boy's Evidence: He says the Story he told of the Razor, was all a Lie.*

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Mr. Attorney. Was any thing offer'd, or promised you for signing it.

William Edwards. No nothing at all.

Page 279. Mr. Freke. Did you tell Mr. Braddon it was False?

William Edwards. No.

Mr. Thomson. Before such Time as Mr. Braddon came to you, what did you tell your Father about this Razor?

William Edwards. Sir, I told him, the King and Duke of York were at the Tower, and while I was there I said I saw a Hand cast out a Bloody Razor, and a Maid come out and take it up and go in again.

Mr. Thomson. Did you see any such thing as a Bloody Razor cast out?

William Edwards. No.

Mr. Attorney. Agreeable to what the Boy has now said, to shew you that what Mr. Braddon got him to sign, was all false, here is the young Man that truanted with him the same Morning, that says, he was with him all the Morning, and there was no such thing, and how could such a Malicious Lie enter into the Boys Head if it had not been dictated.

Then Young Mr. Hawkins, Son of Dr. Hawkins, was Sworn.

L. C. J. Tell the Truth in God's Name Young Man, be it one Way or other, let the Truth come out.

Hawkins's Evidence who was with

young Edwards in the Tower, all the Time, and depos'd that the Story of the Razor being thrown out, was false.

Hawkins. In the Morning, I met with Edwards at the Tower, going round with the King, and we walk'd round the Tower as long as the King walk'd, and then the King going into the Constables House, we and some more Boys went to Play, and then I went Home. After I had been there a little while, News was brought my Father that the Earl of Essex had kill'd himself. My Father went down and I followed him, and after I had been there a little while, William Edwards came, and there we stood looking up at the Window an Hour or Two at least, and after we had tarried there a great while, I went out of the Tower-Gate a little after Eleven: I was there before at the Window

Window when *Edwards* came, and went out of the Tower with him; there was no Razor thrown out of the Window, nor did he tell me of any such Thing.

Then it was demanded of *Edwards*, if this Young Man was with him all the while he was in the Tower, and whether he did not tell his Father this Story after he came out of the Tower with *Hawkins*; to both which Questions he answered, Yes.

Mr. *Freke*. You little Boy, *Edwards*, was this Mr. *Hawkins* with you all the Time that you were in the Tower? Page 280;

*William Edwards*. Yes, but only a little while that I was at the Mills.

Mr. *Blathwait* was Sworn.

Mr. *Blathwait*. On the 20th of July Mr. *Braddon* came to *Whitehall*, and this little Boy was brought before his Majesty, and was ask'd what Information he had given Mr. *Braddon*, and whether the matter of the Information were true? The Boy said it was a Lie, and upon his Faith it was not True; and Mr. *Braddon* was call'd in and inform'd of it, and it appear'd to have been an Invention of the Boys to excuse himself for having plaid Truant that Day. Blathwait depos'd that *Edwards* deny'd the Story of the Razor before the Council of which he gave Mr. *Braddon* notice.

Mr. *Braddon* having been in the Country, came afterwards before the King, and was again examin'd upon this matter, by which it appear'd, that he did continue in his Pursuit: and the Words in the Minuets, which I took at the Examination of one of *Edwards's* Sisters, were that *Braddon* Compell'd the Boy to sign it.

Then a Letter was produced which Mr. *Blathwait* attested Mr. *Speke* had acknowledg'd to be his.

Mr. *Monstevens* was Sworn.

He depos'd that about five or six days after my Lord *Essex* had Murder'd himself, Mr. *Braddon* came to my Lord *Sunderland's* Lodgings at *Whitehall*, (one of the Secretaries of State) with a young Woman and a Boy about Thirteen Years Old, that he told him he had earnest business with my Lord *Sunderland*, and came from Sir *Henry Capel*, and that he came with an Information that the Boy had given relating to the Earl of *Essex's* Death: Monstevens Evidence of Mr. *Braddon's* coming to my Lord *Sunderland's* Office, saying he prosecuted this matter out of Conscience.

That the Deponent replying, he wondered Sir *Henry Capel* had not appear'd himself in a matter wherein the Reputation of his Family was so much Concern'd; He told him, Sir *Henry* had not been well, and did not stir abroad, that thereupon the Deponent said he had been to wait upon the King since the Death of the Earl of *Essex*: Then Mr. *Braddon* answer'd, what he did he was oblig'd to do out of Conscience, and the Duty he ow'd to the memory of the Earl of *Essex*. That the Deponent went with him to my Lord *Sunderland*, and my Lord took the Information and Mr. *Braddon* was committed to Custody, and brought before the King and Council.

*L. C. J.* Hark you young Man, did you never tell any Body you were in my Lord *Brandon Gerrard's* Lodgings.

*William Edwards.* Never in my Life.

*L. C. J.* Now read the Information.

The Information which  
*Braddon* procur'd young  
*Edwards* to  
sign.

*Clerk of the Crown.* [Reads] " The Information of *William Edwards*, second Son of *Thomas Edwards*, of the Parish of *Allhollows Barkin, London*, taken the 18th Day of *July*, in the 35th Year of the Reign of our Sovereign Lord King *Charles II. An. 1683.* says, That this Informant on *Friday* the 13th of this Instant *July*, as he was going to School with his Brother *Edward*, he heard that his Majesty and his Royal Highness the Duke of *York* were going to the Tower. Whereupon this Informant left his Brother and went to the Tower to see his Majesty, and his Royal Highness. And when this Informant had seen his Majesty and his Royal Highness. This Informant about nine a Clock in the Morning of the same day, went to see my Lord *Brandon Gerrard's* Lodgings; And as this Informant was standing almost over against my Lord *Gerrard's* Lodgings, between the Lord *Gerrard's* and the late Lord *Essex's* Lodgings; this Informant saw a Hand cast out a Bloody Razor, out of the said Earl of *Essex's* Lodgings. And this Informant was going to take up the said Razor, which he saw on the Ground, to be Bloody, but before this Informant came to the Razor, there came

" a Maid



" a Maid running out of Captain *Hawley's* House,  
 " where the said Lord of *Essex* lodg'd, and took up  
 " the said Razor, which she carried into the said  
 " Capt. *Hawley's* House. And this Informant be-  
 " lieves it was the said Maid, who he first heard cry  
 " out Murder. And this Informant further saith,  
 " That he heard the said Maid say to some which  
 " were about the Door, after the Murder was cry'd,  
 " that she did hear the said Lord of *Essex* to groan  
 " three Times that Morning. The Father three  
 " Sisters and Mother will swear, that the said  
 " *William Edwards* did declare the Substance of  
 " this Information to them, on *Friday* the 13th  
 " Instant, and never in the least deny'd it, till  
 " *Tuesday* after; When being Chid and threatned  
 " by the Elder Sister, he did deny it, but soon after  
 " Confess'd it, and sign'd it in the presence of  
 " five or six Witnesses.

Sir *Henry Capel* was sworn.

Att. Gen. Sir *Henry Capel*, will you please to  
 give an Account, whether ever you employ'd this  
 Gentleman Mr. *Braddon*, about any such busi-  
 ness as he has here undertaken?

Sir *Henry Capel*. My Lord he was to speak with  
 me twice; The first Time I was in very great dis-  
 order, that I don't know very well what was said;  
 The second Time he spoke of such a Business as the  
 Court is well appriz'd of already, (pardon me I  
 do not repeat it) I made Answer to him; Mr.  
*Braddon* I am under great grief, and under a great  
 Burthen of Business in my private Family, What-  
 soever you have to say in the Matter, I desire you  
 would go to a Secretary of State and acquaint  
 him with it.

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 Sir *Henry Capel*  
 deposes that  
 when *Braddon*  
 came to him,  
 he directed  
 him to lay the  
 matter before  
 one of the Se-  
 cretaries of  
 State.

*Justice Withins*. Did you desire him to go to  
*Edwards's* House and ask him any Questions about  
 it?

Sir *Henry Capel*. I know nothing of *Edwards*  
 or his House at all.

Mr. *Blathwait* depos'd further, that when this  
 Information was before the King, and was shew'd  
 to Mr. *Braddon*, he Confess'd he had gone about,  
 to find some *Justice* of the Peace, to take it upon  
 Oath, that he named Sir *Robert Clayton*, and Sir

*Braddon* would  
 have had Sir  
*Robert Clayton*  
 take the Infor-  
 mation pri-  
 vately.

*John Lawrence*, and Confess'd, that because *Sir Robert Clayton* refus'd to take it in Private, he would not let him take it at all, but went away with it.

*Mr. Beech* was Sworn.

*Att. Gen.* Will you acquaint the Court with the manner of apprehending this Gentleman, and what Papers were found about him.

*Beech* deposes he apprehended *Mr. Braddon* with *Speke's* Letter and the Informations about him.

*Beech.* I was present when *Mr. Braddon* was apprehended in *Wiltshire*: One *Col. Airs* was the Justice of Peace, before whom *Mr. Braddon* was examined, and by whom he was Committed, he is since Dead, several Papers were found upon him: He was committed to the County Jayl, and from thence by *Habeas Corpus* remov'd to *London*; I have Copies of all the Letters that were taken about him, which I examin'd with the Originals. The one was a Letter sent by one *Speke* to *Sir Robert Atkins*: He told me he had a Letter from one *Burgis* of *Marlborough* to go to one *Compton* at *Frome*, who is Postmaster there, to enquire about a Report that was there the 13th of *July*, that the Earl of *Essex* was Murdered, which was the same Day he Murder'd himself. I went afterwards to that *Compton* at *Frome*, he said he never heard any thing of it, or that there was any Noise of the Earl of *Essex's* Murder, till the Sunday following, which was two or three Days after.

*Mr. Blathwait* depos'd that *Mr. Speke* own'd he wrote the Letter found upon *Mr. Braddon*, and directed to *Sir Robert Atkins*: Which was order'd to be Read.

*Cl. of the Cr.* This is subscribed by *Hugh Speke*, and dated, *London, Lincoln's Inn, August* the 15th 1683. *Wednesday Night*, 10 a Clock, and directed to the Ever Honour'd *Sir Robert Atkins* Knight of the Bath, at his House at *Netherwell* near *Stow* on the Old, in *Gloucestershire*.

*Speke's* Letter.

The Substance of the Letter was, that the bearer, *Mr. Braddon*, was the only Person that prosecuted the Murder of the Earl of *Essex*; That he was qualified for such an Undertaking, being a Person of good Reputation, Prudence, and great Courage: That he was going Post for *Marlborough* to make a further Discovery. That he lent him his Man

to go with him, for that it was fear'd he would be stab'd or knock'd on the Head: That he had directed him to Wait on Sir *Robert*, since he was to go so near him, and advise with him how he had best proceed; but that he should conceal his being there, lest it should be a prejudice to Sir *Robert*. That he hop'd they should bring the Earl of *Essex's* Murder upon the Stage, before they could bring any of those in the Tower to a Tryal. He informs Sir *Robert*, that *Braddon* was to go by the Name of *Johnson*. That he had receiv'd a Letter from Sir *Robert* that Day, with a Letter inclosed for the Lady *Russel*, which he seal'd up, and carried her; and that my Lady return'd him Ten Thousand thanks for his Kindness, and the great Pains he had taken.

Mr. — My Lord I would not have any Reflection upon Sir *Robert Atkins* for he knows nothing at all of this Matter.

*Sol. Gen.* The Letter was never receiv'd by Sir *Robert Atkins*, but taken before it came to him: All the matter is, 'tis an unhappy thing to be thought well of by such sort of People.

Then the Information of Mrs *Edwards*, Mother of the Boy, was read, wherein she deposes that her Son told her the substance of what is contain'd in his own Information on *Friday* the 13th of *July*, about ten in the Morning.

Page 284.  
Mrs. Edwards's  
Information.

Then the Information of *Jane Lodeman*, aged about Thirteen Years was read, Importing that she was in the Tower on *Friday* the 13th of *July* last, and standing over-against the late E. of *Essex's* Lodging Window, she saw a Hand cast out a Razor, out of the Window and heard Shrieks, and that a Soldier by the Door, cry'd to those within the House, that, somebody should come and take up a Razor which was thrown out, and there came a Maid out of the House with a White Hood, but who took up the Razor she could not tell.

*Jane Lodeman's*  
Information.

Another Paper was read Importing that *William Glasbrook* heard the Girl give her Aunt the above-said account, the said 13th of *July*: Of which he was ready to make Oath.

These Papers were found about Mr. *Braddon*, when he was taken : And the following Letter also, which was found about him, was read.

*Cl. of the Cr.* This is directed for Mr. *Cumpen*, at the *Dolphin* in *Frome*, and subscribed *Jeremiah Burgis*, and dated *Marlb. Oct. 21.*

Mr. *Cumpen*,

*Burgis's Letter.*

" These are to desire you to call to Mind, that  
" I was in *Frome* the 6th of *July*, being *Friday*,  
" where I heard the Report that the Earl of *Essex*  
" had cut his own Throat; I would desire you to  
" enquire into it, to know who first reported it,  
" and give this Gentleman the Truth of it, and  
" in so doing you will oblige me &c.

Page 285.  
The Defence.

Mr. *Wallop* and Mr. *Williams*, the Defendant's Council, urg'd in behalf of their Clients, That what they had done was not with any malicious or factious Design; nor did they go about to procure these Informations, but heard of these things accidentally; that if they had gone a little out of the Way, and taken these Informations and Examinations in Writing, in order to lay them before the Secretary of State, they hop'd it was no Crime if they did not do it seditiously, but only with an Intention that Mr. Secretary might receive a more full and clear Information; and having open'd the Nature and Course of their Evidence, Mr. *Lewes* was call'd.

*Lewes* appear'd,

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*Lewes* deposes, that on a *Friday* in the Summer he heard of the Earl of *Essex's* Death.

He refus'd to take his Oath, till Mr. *Braddon* had paid him his Charges; which being done, he depos'd, That as he was riding near *Andover* on a *Friday* in the Summer Time, one met him and told him, the Earl of *Essex* had cut his Throat, that he could not tell what Month it was, but the next Day he went to *Marlborough* Market, and when he came Home, the Neighbours ask'd him What News? and he said, he heard Yesterday that the Earl of *Essex* had cut his Throat; and they reply'd, It was done but Yesterday, How could you hear it so soon?

Mr. *Fielder* was Sworn.

Mr. *Williams*. Pray what did you hear, and when, of the Earl of *Essex's* Death.

*Fielder*,



*Fielder.* The *Wednesday* and *Thursday* of the same Week that the Earl of *Essex* cut his Throat, it was reported in our Town of *Andover*, That he had so done. The Women talk'd of it as they went in and out of my Shop, and as they went up and down the Town.

*Fielder deposes,*  
That it was  
reported at  
*Andover* the  
*Wednesday* be-  
fore he died.  
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*Att. Gen.* What Day of the Month was it, Mr. *Fielder*?

*Fielder.* I did not mind the Day of the Month, I can't tell that.

*Sol. Gen.* How do you know it was that Week the Earl cut his Throat?

*Fielder.* Because on *Saturday* Night that Week, we had had certain News of it from some Clothiers.

*Just. Withins.* Name one Person that spoke of it the *Wednesday* and *Thursday* before.

*Fielder.* I cannot, I keep a publick Shop, and don't take Notice of every one that comes in and out, to remember particularly.

*Mr. Wallop.* He might hear it, and not take Notice of whom; but it was the common Fame at *Andover*.

*Mr. Williams.* Let it go as it will: Your Lordship and the Jury hear what he says.

*L. C. J.* But under Favour, *Mr. Williams*, It ought not to pass so easily, 'tis a Contrivance to deceive the King's Subjects, and shews a Design to pick up Evidence, to amuse the Unwary, and fill their Heads with Fears and Jealousies of I know not what.

*Mr. Wallop.* I would excuse my Client from Malice as well as ever I can, and therefore we produce these Witnesses, to shew what Grounds he had for what he did.

*Braddon.* I desire the Family of the *Edwards's* may be call'd.

*L. C. J.* Name them: How can we tell who your Witnesses are?

*Braddon.* Will your Lordship give me Leave to make my own Defence.

*L. C. J.* Ay, if you will; but then take Notice, Where one has your Council are discharg'd from making any Defence for you. Council he ought not to

*Braddon.* speak himself.

*Braddon.* May it please your Lordship and you Gentlemen of the Jury.

*Att. Gen.* Call your Witnesſes firſt, and then ſpeak.

*Mr. Edwards* and *Mrs. Edwards* came into Court.

*Braddon.* When was it I firſt ſaw you? and what did you tell me that your Boy reported?

Page 288.  
*Mr. Edwards*  
cross-exa-  
min'd.

*Mr. Edwards.* It was the 17th of *July* I ſaw you, and I told you what I have acquainted the Court withal, That the Boy had brought home ſuch a Report.

*Braddon.* Had the Boy ever deny'd it before I ſaw you?

*Edwards.* I was inform'd he deny'd it that Day after you came.

*Sarah Edwards,* the Mother, was Sworn.

*Braddon.* What did your Child tell you, *Mrs. Edwards?*

*Mrs. Edwards*  
depoſes, her  
Boy reported  
a Story of the  
Razor the  
13th of *July*.

*Mrs. Edwards.* He ſaid, he had been at the Tower, and ſeen the King and Duke of *York*, and that the Earl of *Effex* had cut his Throat; and Lord Mother! ſays he, and wept. Lord Child! ſaid I, You are going to make ſome Excuse that I ſhould not beat you for playing Truant: No, Mother ſays he, and then told me the Story of throwing the Razor out of the Window; he continued in it a little while, and then afterwards did deny it.

*L. C. J.* How came he to deny it?

And after-  
wards deny'd  
it.

*Mrs. Edwards.* When this Gentleman came and acquainted my Husband with his Buſineſs, it put us all into a great Damp: The Two Boys were then at School, and my Daughter *Sarah* was grievouſly frighted; and when the Boys came home, ſays ſhe, *Billy*, Deal truly, and don't you tell any Lye to ſave your Breech, for here has been a Gentleman to enquire ſomething about what you ſaid. Why, Siſter, ſays he, Will any thing of Harm come; Truly, Child, ſays ſhe, I don't know; and upon that he did deny it.

*L. C. J.* Did you tell *Mr. Braddon* before the Paper was ſign'd, that he deny'd it?

*Mrs. Edwards,*

Mrs. *Edwards*. Yes, my Lord, he knew that before the Paper was sign'd.

*Braddon*. Did not the Boy come to you and cry out, He should be hang'd, and then did deny it?

Mrs. *Edwards*. Yes, That he did.

*Braddon*. Did not your eldest Daughter chide him, and threaten him?

Mrs. *Edwards*. Yes, She bid him speak the Truth.

*Att. Gen.* And then he deny'd it?

Mrs. *Edwards*. Yes.

L. C. J. Ay, says she, to him, *Billy*, Do not, to save thy Breech, tell a Lie, but speak the Truth: Why then, says he, the Truth of it is, There was no such thing. Pray, good Sir, How came you to be a Justice of Peace, and to turn Examiner? You belong to the *Temple*, How came you to take Examinations here in *London*? but that some People are so very officious in Matters that concern them not, on Purpose to raise a Dust.

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*Sarah Edwards*, the Daughter, Sworn.

*Braddon*. Pray tell your Knowledge of what the Boy declar'd.

Then she repeated the Story of the Boy's telling them he had been at the Tower, and seen a Hand fling a Razor out of a Window.

*Braddon*. Pray, Mistriss, Did you not prevail on him to deny it afterwards?

*Sarah Edwards*. This Mr. *Braddon* came the Tuesday after my Lord *Essex's* Death, and told my Father he came from Sir *H. Capel*, and the Countess of *Essex*, to know the Truth of my Brother's Report: So my Father told him, the Boy had reported such a Thing, but he would not assert the Truth of it, for he was apt to tell Lies to excuse his playing Truant. When the Boy came from School, I bid him be sure to tell me the Truth of this Report: Why, Sister, said he, Will any Harm come of it? Nay, said I, I do not know, for there has been a Gentleman to enquire about it: So then the Child deny'd it. As soon as ever the Child deny'd it, Mr. *Braddon* came in again, and found my Mother and all of us daunted, hearing the Boy deny it: But he bid the Child speak the Truth, and told him what a dreadful Thing it was

*Sarah Edwards's*  
Account of  
the Boys deny-  
ing it.

was to be a Liar, and that he should read the 5th Chapter of the *Acts*, where two were struck Dead for telling a Lie. And on *Wednesday*, about Noon, he comes again, and the Boy own'd it again, and he writ down what the Boy said, and went away, saying, he would go to Sir *H. Capel*, and the Countess of *Essex*. On *Thursday* he came again, and brings a Paper written over again, not the same he writ at our House, and then the Child set his Hand to it. The Child was something unwilling, so, says he to him, it will be no Harm to you, if any Danger does come of it, it will come to me, and not to you.

*Braddon*. Upon your saying he deny'd it, I ask'd him the Reason why he deny'd it; pray will you tell what Answer he made to that Question?

*Sarah Edwards*. I can't recollect that.

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*Braddon*. Why did he run to his Mother, and cry he should be hang'd.

*Sarah Edwards*. The Child had that fear and dread upon his Spirits, knowing it was a Lie (I suppose) he had told.

*Mr. Wallop*. Did not you tell him that his Father would be in danger of losing his Place?

*Sarah Edwards*. Yes, Sir; we did.

*Braddon*. When the Boy did own what he first said, and I ask'd him the reason of his Denial, did not he say it was fear, through your Discouragements and Threatnings.

*Sarah Edwards*. No, he did not say it, did he Mother?

*Braddon*. *Mr. Edwards*, did not your Son, when he was ask'd why he deny'd it, say, that it was Fear and Discouragement, through his Sister's Threats, was the Cause?

*Edwards*. Something of that Nature he did say.

Then *Ann Barton* was Sworn.

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*Barton* deposes she was by when *Braddon* examin'd the Boy.

She depos'd, that she was at *Mr. Edwards's* when *Mr. Braddon* examin'd the Boy, and he told the Story of the Razor, as above related; and that *Mr. Braddon* told him the dreadful Consequences of telling a Lie, and bid him read the Fifth Chapter of the *Acts*, &c. And that the Boy said it was true,



true, and he would speak it before any Justice of the Peace in the World. That Mr. *Edwards* and Mr. *Braddon* went down with the Boy, to see whether it were the right Window of the House, where my Lord died. And that Mr. *Braddon*, when he came up again, call'd for a Sheet of Paper, that he might take the Story from the Boy's own Mouth, and then the Deponent went away.

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*Jane Lodeman*, a little Girl of Thirteen Years Old, was Sworn.

*Braddon*. What did you see in the Tower, that Morning the Earl of *Essex* died?

*Jane Lodeman* deposed she saw a Razor thrown out of the Window, &c.

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She deposed, that between Nine and Ten in the Morning, that Day my Lord *Essex* died, she saw a Hand throw a Razor out of a Window, but could not tell whose Window it was; and heard two Shrieks or Groans presently after. That there were a great many People there besides herself, who saw it; and the Folks said it was the Earl of *Essex's* Lodging. That the Razor fell within the Pails, and she saw a Woman come out of the Lodging in a white Hood, but whether she took up the Razor or no, she could not tell. That a Soldier us'd to stand at the Door, but whether he was there then or no, she could not tell. That she saw the Razor only as it was flying, and it appear'd very bloody, and was open, but she did not see it upon the Ground; but yet she was sure it was a Razor, and not a Knife. And that she did not hear any one speak to the Maid that came out.

Then *Jane Lodeman's* Information was shewn her (which see No. 284.)

L. C. J. Whose Hand-Writing is that?

*Lodeman*. I can't tell, I never could write in my Life.

*Braddon*. Those are the Names of such as heard her say it.

Cl. of the Cr. [*Reads the Information.*] The 8th of of August 1683. *Jane Lodeman*, aged about Thirteen Years, did, in the presence of these whose Names are under written, declare as follows; That the said *Jane Lodeman* was in the Tower, &c. Vide No. 284.

L. C. J.

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*L. C. J.* Here 'tis said she heard the Soldier cry out, but now she says, she does not know if the Soldier were there; and she heard no Body speak to the Maid.

*Braddon.* Did you hear the Soldier cry out, or did you not?

*Lodeman.* No, I did not.

*Sol. Gen.* Were you carried, by Mr. *Braddon*, before a Justice of Peace?

*Lodeman.* No, he did not desire me to go before a Justice of Peace; he took the Examination himself.

Then *Margaret Smith*, the Girls Aunt, was Sworn.

*Smith* deposed the Girl gave her this Relation the 13th of July.

She depos'd, that the 13th of July, she chid the Girl because she had been at play, and she gave the same Account of her seeing a Razor thrown out of the Window, that she did now. That she did not remember that the Girl said any Thing of the Soldier's calling out to take up the Razor, as was incerted in the Paper. That Mr. *Braddon* hearing what the Girl had said, came to her, and desir'd the Deponent to Sign that Paper, which she did. That *Braddon* encouraged the Girl to speak Truth, and that he did not promise her or her Niece any Reward.

*William Glasbrook* was Sworn.

*Glasbrook* deposes to the same Effect, but says the Girl was given to Lying.  
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He depos'd, he heard Mrs. *Smith* chiding her Niece, for saying the Earl of *Essex* had cut his Throat the 13th of July; and the Girl affirmed it was true, for she saw a Bloody Razor, with a Bloody Hand, thrown out at a Window. That he was by when Mr. *Braddon* examin'd the Girl, and writ down what she said, and it was what the Girl then declared. And that the Deponent sign'd the Paper; but that he liv'd in the same House, and had before taken the Girl in a Lie, and was persuaded she was a lying Girl: Of which, indeed, he did not acquaint *Braddon*, when he took the Information.

*Braddon.* These two Children told me, they never saw one another till they were examin'd at the Council.

*William*

*William Smith* was Sworn.

He depofed he was a Barber, and Mr. *Braddon* call'd on him at his Shop, and defir'd him to go with him to the Houfe where the Girl liv'd, which he did, and heard the Girl relate the Story of the Razor being thrown out of the Window, which he was not acquainted with before. That Mr. *Braddon* writ down what the Girl faid, and he, and the reft of them, Sign'd the Paper after it was read to them. That he did not remember any thing about a Soldier, but he writ nothing but what the Girl faid, he was fure, for this Deponent read it over.

*William Smith* depofed he was by when *Braddon* examin'd the Girl.

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*Mrs. Mewx* was Sworn.

*Braddon*. What Day was it you went from *London* into *Berkshire*?

*Mewx*. The Day before my Lord *Ruffel* was Try'd.

Evidence to prove the Report of my Lord *Essex's* Death before he died.

*Braddon*. What Expression did you hear from a Gentlewoman in the Coach?

*L. C. J.* We muft not fuffer fuch a Queftion to be ask'd: That is not Evidence.

*Mr. Wallop*. 'Tis Evidence; there was fuch a Talk, and we think it juftifies Mr. *Braddon*, that he went upon thefe Grounds.

*L. C. J.* Where is the Woman that told her, why is not fhe brought?

*Mr. Wallop*. They fay, fhe is fo big with Child, fhe can't come.

*L. C. J.* Why, if that Woman were here her felf, if fhe did fay it, and would not fwear it, we could not hear her. How then can her Saying be Evidence before us?

*Jeremy Burgis* was Sworn.

*Mr. Wallop*. What can you fay about the Report in the Country?

*Burgis* gives Account of his writing the Letter to *Frame* by *Braddon*.

*L. C. J.* Is not this the firft time, that a Report was given in Evidence in *Westminster-Hall*?

*Mr. Freke*. My Lord, this Man's Letter, that was taken about Mr. *Braddon*, is produc'd in Evidence againft him. Now this Man comes to give an Account how he came to write that Letter.

*Burgis*. It was written to the Landlord of the Houfe where I Quarter'd, that he might give notice to Mr. *Braddon*, of a Difcourfe that pafs'd in his

his House that *Friday*, of a Report that was there, concerning the Earl of *Effex's* Murdering himself.

*L. C. J.* Of whom did you hear it? Who told you so?

*Burgis.* I do not know, I was a Stranger there.

Observable  
that none of  
the Witnesses  
could tell  
from whom  
they heard  
the Report.

*L. C. J.* They can never, any of them, tell particularly who told it them----- Shew him that Letter: Is that your Hand?

*Burgis.* Yes it is.

*L. C. J.* When did you put that Figure of 13 in: There was another Figure before, that is blotted out.

*Burgis.* It was a Mistake in me, I corrected it presently.

*L. C. J.* How came you to alter it from the 6th to the 13th?

Page 297.  
*Braddon* alters  
*Burgis's* Letter.

Mr. *Braddon* was there, and he said, that the 6th was not the Day of my Lord's Death.

*L. C. J.* How came Mr. *Braddon* and you acquainted?

*Burgis.* I am a Pin-maker, and live at *Marlborough*; and one Mr. *Butcher*, a Grazier, who lives there, came and told me, there was a Gentleman come from *London*, to inquire about the Report of the Earl of *Effex's* Death, and desir'd me to speak what I heard at such a Time: So I went to the *White Hart* to Mr. *Braddon*, and told him what I heard at *Frome*; and he desir'd me to write a Letter, to recommend him to the House where I heard it. When I had writ the Letter, I shew'd it him, and having put in the 6th Day, Mr. *Braddon* said it was the 13th.

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*Sol. Gen.* Was the Master of the Post-House at *Frome*, present, when the Report was made?

*Burgis.* I can't say whether he was or no.

*L. C. J.* If he was not there, Why didst thou ask him to call to Mind that Report?

Evidence that  
there was no  
Account of  
my Lord  
*Effex's* Death  
at *Frome*, till  
the *Sunday*  
after.

*Att. Gen.* What said the Post-Master to you, Mr. *Beech*?

*Beech.* I desir'd Mr. *Braddon* might have no Pen, Ink, or Paper; and rid away to *Frome*, to this Post-Master's House, and spake with him and all his Family; and on examining them, there ap-

pear'd



pear'd to be no such Report in the Town, till the Sunday after.

*L. C. J. Mr. Beech*, Did not *Braddon* tell you he came down, upon receiving a Letter from *Burgis*.

*Beech*. He told me he came down upon the Information of this *Burgis*.

*Braddon*. I told you I had a Letter of Recommendation to *Mr. Butcher*, thinking he had been the Person that had reported it: And *Mr. Butcher* went to this Person, and brought him to me, and he told me what he heard. My Lord, I will call no more Witnesses.

*Att. Gen.* Your Lordship, and the Jury observe, I suppose, his Confident Behaviour.

The Court observe *Braddon's* confident Behaviour.

*L. C. J.* Ay, he is no more concern'd at it, than if he had been doing the most justifiable Thing in the World.

*Mr. Speke*, and his Counsel, *Mr. Thomson*, said in his Defence, That he was no otherwise concern'd in this Matter, than in writing the above-said Letter to *Sir Robert Atkins*, and sending it by *Mr. Braddon*, and lending him his Man to wait on him in that Journey. Then the Council for the King observ'd, that the Letter was writ in such a Strain, as shew'd *Mr. Speke* to have a considerable share in this Contrivance. He says, *We Row against the Stream, We thank you for your Kindness to Us, and We hope to bring on the Tryal of the Earl of Essex's Murder, before they can any of those in the Tower, and Advises Braddon to go by the Name of Johnson, &c.*

*Mr. Speke's* Defence.  
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To this *Mr. Speke* said, That *Mr. Braddon* came to him late at Night, when he had been drinking a Bottle of Wine, and he hardly knew what he wrote.

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*Mr. Wallop*. All I can say for *Mr. Speke*, is this, He did believe *Mr. Braddon's* Grounds, as he told him, were probable to go upon, but he knew nothing himself, and concern'd himself no farther. I hope the Jury will consider of it, that there is no Contrivance prov'd against him.

*Att. Gen.* We have given as great an Evidence as ever was given, I think, of any Offence. But

to clear up the Matter, and shew that it was impossible for any Man, unless the most malicious and villanously inclin'd, against the Government and Peace of the Kingdom, to spread such a Report, we will call two or three Witnesses to prove the Earl of *Essex* murder'd himself.

Then *Bomeney* was Sworn.

*Bomeney's Evidence of my Lord Essex's cutting his Throat.*

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He deposed, that he went with my Lord *Essex* from *Whitehall*, and waited on him all the while he was in the *Tower*: That my Lord call'd for a Penknife, to cut the Nails of his Hands and Feet, which were long, but that coming away in haste, he had none; but sent to the Steward to send him one next Morning, when he sent the Footman for Provisions; but the Steward sent Word he had none, but would send one on the Morrow. That next Morning, the Deponent sent the Footman again early, and among other Things he wrote in the Note, *Do not forget the Penknife*. That my Lord call'd again for the Penknife before the Footman return'd; and the Deponent telling him he was not come, my Lord said, he could do it with one of his Razors--- That the Deponent went to his Closet and fetch'd him one, and he pick'd his Nails with it, as he walk'd about the Chamber:

That the Deponent turn'd out of the Chamber into the Passage, where he talk'd with *Russel* the Warder; and that he look'd out of the Window, and his Majesty was in the *Tower*. That after the Deponent had talk'd with the Warder a little while, he went down into his Closet again, and the Footman return'd with the Provisions and Penknife; and brought a Note from Mr. *Billingly* the Steward, to my Lord, which the Deponent went up with to my Lord's Chamber, but found no Body there. But there being a Closet in the Room, where there was a Close-Stool, he thought my Lord was there, and went down, and staid a little while, and then went up again, and found the Closet Door shut still; he knock'd three times, and call'd my Lord, but no Body answer'd: Then he look'd through a Chink of the Door, and could see Blood, and a little part of the Razor. Then he call'd the Warder, and the

the People of the House, that *Russel* the Warder push'd against the Door, but could not open it very far, because my Lord's Foot was against the Door. That the Closet was very little, and that the length of a Man, and the Close-Stool at the upper end, would fill it. And that his Lord lay all along on his Side, and the Razor lay by him. That there was a Window in the Closet, and he thought, a Casement, which he believ'd open'd into the Yard.

*Att. Gen.* Did you observe your Lord melancholy, Mr. *Bomeney*?

*Bomeney.* Yes, he was melancholy, but we took no Notice of it, for he us'd to be so, and we had no Reason to suspect any thing more than ordinary.

*Sol. Gen.* Where did you find *Russel* the Warder, when you came up again?

*Bomeney.* At the Guard, in the same Posture I left him when I went down.

*Russel* the Warder was Sworn.

*Att. Gen.* Pray give my Lord an Account where you was at that time, and what was done?

*Russel.* I was in the Chamber opposite to my Lord's Chamber, there is but a little Step between the Doors, the Stairs come up betwixt the two Doors, no Body could pass backwards or forwards, but I must see them, for I was then Waiter, and stood upon the Guard. And my Lord ask'd Mr. *Bomeney* whether the Penknife was come, and he told my Lord no: Then, says he, lend me your Razor, that will do it. And my Lord took the Razor in his Hand, and the Door was open, and he went two or three Turns in the Room with the Razor. This I saw, the Door being open, as I stood in the Passage. By and by, Mr. *Bomeney* went down, and my Lord shut the Door to him, and Mr. *Bomeney* staid below a little while, and came up again; and my Lord was gone to the Closet to Stool, as he supposed, so he went down, and staid about a Quarter of an Hour.

*Russel* the Warder's Evidence of my Lord's cutting his Throat.

*L. C. J.* Had any Person been there, from the time *Bomeney* went down, to the time he came up again?

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*Ruffel.* No, my Lord, there was no Body went up or down all the time, but *Bomeney*. He came up, and seeing my Lord was not come out of the Clofet, he put by the Hanging, and look'd in, and saw my Lord in his Blood, lying in the Clofet: Whereupon he made a great Noise, and I step'd up, and found the Key on the outside the Door, and open'd it a little way, but could not put it quite open, because his Legs lay against the Door, and he lay all along in the Clofet, which was very narrow, and the Razor by him. There is a Window in the Clofet, that looks into the Back-yard, which is paled in, and has only a Door out of the House, that goes into it. No Body can come into that Yard, without going through Captain *Hawley's* House.

*L. C. J.* Mr. *Bomeney*, How long had you liv'd with my Lord of *Essex*?

*Bomeney.* I waited on him, as his *Valet de Chambre*, Six Years.

*Lloyd*, the Centinel, was Sworn.

*Lloyd* the Centinel, relates what he knew of my Lord's cutting his Throat.

*Mr. Recorder.* Give an Account where you stood, when my Lord *Essex* murder'd himself?

*Lloyd.* I stood at the Street Door of my Lord *Essex's* Lodgings.

*Just. Withins.* Did any Body come into the House that Morning?

*Lloyd.* No Body came in all the while I stood there, and I was there when the Noise of it was made above Stairs.

*L. C. J.* Did you see e'er a Coach there?

*Lloyd.* Not to stand there at all.

*Sol. Gen.* Had you seen my Lord of *Essex* that Morning?

*Lloyd.* Yes, He spake to me at the Casement, and ask'd me what a Clock it was.

*Att. Gen.* Did you see him when my Lord *Russel* went by?

*Lloyd.* Yes, I saw him then, and it was not half an Hour after that, the Cry was made, of my Lord's having kill'd himself.

*Att. Gen.* Did any Maid go out, or did you call to a Maid to come and take up the Razor, that was thrown out of the Window, of Captain *Hawley's* House?

*Lloyd.*



*Lloyd.* There was no Razor thrown out, or any Maid came out of the House; nor did I call to any Body, and there was no other Soldier there but me, at that time.

*Sol. Gen.* Could you open the Pails? Is there a Door to the Street-side, out of the Pails, into the Yard?

*Lloyd.* 'Tis no Yard, but there is a Door that all pass thro' that come to the House.

*Capt. Hawley* was Sworn.

He depos'd, That he was standing at the *Tower-Gate*, between Nine and Ten a Clock in the Morning, when the Warder came and told him my *Ld. Essex* had murder'd himself: That when he came up Stairs he went to the Closet, but could not open the Door far; that he look'd in and saw the Razor bloody, and my Lord lying on his Arm, he could not tell whether he was dead or no. Then the Constable was ordered to come and secure, and examine all the Servants.

Page 303.  
*Capt. Hawley's*  
Evidence how  
he found my  
Lord.

*L. C. J.* Pray, *Capt. Hawley*, Where does the Casement look into?

*Capt. Hawley.* The House having settled, the Casement wont open far; and 'tis so low, and the Pails are Nine or Ten Foot high, that 'tis impossible for any one to throw any Thing out of the Window Three Foot: They cannot throw any Thing out of the Window to be seen.

*Speke.* If your Lordship please, I will call my Man to prove that I knew nothing of *Mr. Braddon's* coming to me.

*L. C. J.* Ask him what you will.

*Speke.* Did you ever see *Mr. Braddon* with me?

*Servant.* Never but once before that Time he came to my Master's Chamber, which was the Night before he went out of Town; and when he had been there a little while, my Master order'd me to get ready to go into the Country with him, but afterwards he got another to go with him, and sent me home again.

*Speke* observ'd, That it had not been prov'd he had conspir'd with *Mr. Braddon* to procure false Witnesses, as was laid in the Information, but that it appear'd he was surpriz'd when he writ that Letter, by *Braddon's* making him to believe that to

be true which was not, and that he writ it late at Night, when he had been at the Tavern, &c.

*Braddon* observ'd upon the Evidence, That it had not been prov'd he had used any evil Arts to perswade the Witnesses to testify what was false, but that he had dealt with all the Candour and Caution imaginable, and desir'd the Jury to take no Notice of what had or should be spoken, but what was prov'd.

Page 304.  
The Chief Justice's Observations upon the Evidence.

My Lord Chief Justice summ'd up the Evidence, and observ'd, " That a greater Crime than this, that the Defendants stood charg'd with, could hardly be committed; that he thought Robbery and such other Fellowies were not such Monstrous Crimes in their true and real Weight, tho' in Consideration of Law, in respect of Punishment, they were greater; for to spread false Reports, in order to move Sedition, Ill-Will, Heart-Burnings, and Jealousies in the King's Subjects against the Government, and to suborn Witnesses to that Purpose, was surely a much greater Crime, than Robbing upon the High-way: That the Crime *Mr. Braddon* was accus'd of, carried all the Venom and Baseness, and the greatest Inveteracy against the Government, that ever any Case did; for it was insinuated, That because the King and the Duke were walking in the Tower that Day, and near that Time when this unfortunate Thing happen'd, that the King and the Duke had design'd this Murder: That if the Law had made it Penal to scandalize a private Person, and much more to scandalize a Nobleman; how much more penal ought it to be, when the King and the whole Government were scandaliz'd?

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Page 307.

" That as to *Mr. Speke*, If he did write the Letter above-mention'd, with a Design to have that Lie spread abroad, he made himself a Party, and was as Guilty as the other, as to the Design in General laid in the Information, tho' not equally guilty, as to the Management of the Witnesses: But if the Jury were of Opinion he was surpriz'd in the Thing, or did it ignorantly or innocently, without any Concern (though he seem'd

“ seem’d to have a wonderful Concern in his Letter, and very zealous in the Prosecution of this Business,) they were to acquit him. But if he did contribute to the Design of spreading this false Report, he was as Guilty of that Part as Mr. *Braddon*, though he were not Guilty of Suborning the Witnesses.

“ That as for Mr. *Braddon*, His going about to get Witnesses to support the Credibility of a Thing that was notoriously false, was Ten times worse than the spreading the Report it self: That Mr. *Braddon* was a busy Man, a great Reformer, that mightily concern’d himself in the Reformation of the Government, though he had no great Share in it: That he had not so prodigious an Estate, that for Fear of losing it he need be so wondrous busy and active in Reforming the Government: But he always observ’d it, That your Beggary Inconsiderable Fellows, were the warmest People in the Business of Reformation, and for Defending Liberty and Property, as they call it; and then they put it under the Disguise of Religion, when alas! those that have no Religion are the greatest Pretenders of taking Care of it, and those that have no Effects or Properties, are usually fullest of Noise about Liberty and Property. But the Meaning of it was plain, If they could but exasperate the People into a Rebellion, that was the Way to get a Property; and if they could but have Liberty to do what they pleas’d, that was all the Liberty they contended for.

“ That as to the Corrupting of Witnesses, tho’ *Braddon* did not get any Witnesses Sworn, and so it was no Subornation of Perjury strictly; yet however, it was a Misdemeanour to labour any one, much more such a Child, into a Falsity as apparently he did: That when the Boy refus’d to sign it, yet he press’d him, telling him there was no Harm like to come, but only to Mr. *Braddon* himself, and so he was perswaded to sign it.

“ That if any Proof in the World were sufficient to prove Malice, the Jury had sufficient

Page 310.

The Defen-  
dants are Con-  
victed.

“ Proof of it before them now: If it had been a  
 “ Thing of Indiscretion only without Malice, if  
 “ there had been nothing of Caution given him  
 “ about it, as a Thing that concern’d not him,  
 “ there might have been something said to alle-  
 “ viate it; but for him to come as if he had Au-  
 “ thority from the Countess of *Essex* and Sir  
 “ *Henry Capel*, who denies it, shew’d the Malice  
 “ of his Design.

Then the Court adjourn’d, and the Jury after-  
 wards gave in a private Verdict, which the next  
 Morning was repeated in Court and recorded, viz,  
 That the Defendant, *Laurence Braddon*, was *Guilt-*  
*ty* of the whole Matter charg’d upon him in the  
 Information; and the Defendant *Hugh Speke*, *Guilt-*  
*ty* of all but the Conspiring to procure false Wit-  
 nesses, and of that they found him *Not-Guilty*.

*Luna, 21 Aprilis, 36. Car. 1684. B. R.*

Mr. *Attorney* mov’d the Court, that a good Fine  
 might be set upon the Defendants.

Mr. *Williams*. We are retain’d to move in Ar-  
 rest of Judgment.

L. C. J. When were the Rules out?

Cl. of the *Crown*. The Rules were out the last  
 Day of the last Term, and then Judgment was  
 entered.

Mr. *Wallop*. My Lord, We took it that it was  
 put off by Consent to this Day; We conceive we  
 have very good Matter upon the Verdict to move  
 in Arrest of Judgment.

*Burton*. Indeed I did consent on *Saturday*, that  
 whatever they could move then, they should move  
 on *Monday*.

Mr. *Ward*. That was only that they should ap-  
 pear to Day, instead of *Braddon*’s being taken up  
 by a *Capias per Fine*.

Judgment en-  
ter’d.

Page 311.

Page 312.

Their respec-  
tive Fines are  
set.

L. C. J. Here is Judgment enter’d regularly,  
 you come too late.

Then the Court having shewn the Heinousness  
 of the Offence, and *Braddon* still persisting in his  
 Innocence, Mr. Justice *Withins* proceeded to pro-  
 nounce the Sentence, viz. *The Court, for this Of-*  
*fence, sets upon you, Mr. Braddon, the Fine of 2000 l.*  
*and*



and order, that you find Sureties for your good Behaviour during Life, and that you be Committed till this be performed. And for you, Mr. Speke, we have consider'd that you are not so highly Guilty as Mr. Braddon; you are Guilty of a great Offence, but not so Guilty as he; and therefore we think fit to Set upon you the Fine of 1000 l. and that you find Sureties for your good Behaviour during your Life, and be Committed till you perform it.

Then they were carried away to the King's Bench.

The Tryal of Sir SAMUEL BERNARDISTON, Bar. 14 February, 36 Car. II. 1683. upon an Information preferr'd against him in the preceding Hillary-Term, by His Majesty's Attorney-General, for a Misdemeanour. Page 313.

N. B. Upon Oath made that he was dangerously Ill, the Court were pleas'd to Respit his Recognizance for his Appearance the First Day of the Term, and allow him the Liberty of Pleading to the Information by Attorney.

“ THE Information sets forth, That whereas there had been a horrid Conspiracy set on Foot for the Destruction of the King and the Subversion of the Government, for which divers Persons had been Indicted, Convicted and Executed, particularly my Lord *Russel* and Col. *Sidney*: The Defendant Sir *Samuel Bernardiston*, being of a Factious, Seditious and Disaffected Temper, and intending to Scandalize and Villify the Evidence, and to disquiet and disturb the Government, had caused several Letters to be written and published, wherein are these Expressions.

The Information for Scandalizing the Government by several Letters or Libels, wherein he asserts that the Plot, of which my *Ld. Russel*, *Sidney*, &c. had been Convicted, was a Sham.

“ The Return of the D. of *Monmouth* to *White-hall*, and his being received into extraordinary Favour of his Majesty, hath made a strange Alteration

First Letter.

Page 314.

" teration of Affairs at Court; for those that be-  
 " fore spoke of him very Indecently, now Court,  
 " Cringe, and Creep to him. His Grace com-  
 " plain'd to the King of the scandalous Represen-  
 " tation that was made of him in the *Mondays*  
 " *Gazette*, upon which the *Gazetteer* was call'd  
 " to Account for it, who alledg'd for himself that  
 " a Person of Great Quality sent him in Writing  
 " the Words therein recited, commanding him  
 " to put them in the *Gazette*. Yesterday being  
 " the last Day of the Term, all the Prisoners that  
 " were in the Tower upon the late Sham Prote-  
 " stant Plot, were discharg'd upon Bail. Mr. *Brad-*  
 " *don*, who prosecuted the Murther of the Earl  
 " of *Essex*, the Information put in against him in  
 " the *King's-Bench* by Mr. *Attorney*, for a pre-  
 " tended Subornation, &c. was not prosecuted,  
 " and his Bail was discharg'd. And the passing  
 " Sentence upon the Author of *Julian* the Apo-  
 " state, and the Printer of the late Lord *Russel's*  
 " *Speech*, was pass'd over with Silence: Great Ap-  
 " plications are made to his Majesty for the Par-  
 " doning Mr. *Sidney* in the Tower, which is be-  
 " liev'd will be attained, and that he will be ba-  
 " nished. The Lord *Howard* appears despicable  
 " in the Eyes of all Men; he is under Guard at  
 " *Whitehall*, and 'tis believ'd will be sent to the  
 " Tower; for that the Duke of *Monmouth* will  
 " accuse him concerning the Testimony he hath  
 " given, and the Papists and High Tories are quite  
 " down in the Mouth, their Pride is abated, them-  
 " selves and their Plot confounded, but their Ma-  
 " lice is not asswaged. 'Tis generally said the  
 " Earl of *Essex* was Murder'd. The brave Lord  
 " *Russel* is a-fresh lamented. The Plot is lost here,  
 " except you in the Country can find it out among  
 " the Addressers and Abhorers. This sudden  
 " Turn is an Amazement to all Men, and must  
 " produce some strange Events; which a little  
 " Time will shew.

In another Letter are these Words,  
 Second Letter. " I am to answer Yours of the 27th and 29th  
 " past, and truly I cannot but with great Sorrow la-  
 " ment the Loss of our good Friend honest Mr. *John*  
 " *Wright*;

“ *Wright*; but with Patience we must submit to  
 “ the Almighty, who can as well raise up Instru-  
 “ ments to do his Work, as change Hearts, of  
 “ which we have so great an Instance in the Busi-  
 “ ness of the Duke of *Monmouth*, that no Age or  
 “ History can parallel. I am now thoroughly sa-  
 “ tisfied, that what was printed in the *Mondays*  
 “ *Gazette* is utterly false, and you will see it pub-  
 “ licly declar’d so shortly. The King is never  
 “ pleas’d but when he is with him, hath com-  
 “ manded all the Privy Council to wait upon him,  
 “ and happy is he that hath most of his Favour.  
 “ This Pardon was Sealed and delivered to him  
 “ last *Wednesday*. ’Tis said he will be restor’d to  
 “ be Master of the Horse, and be call’d into the  
 “ Council-Table, and to all his other Places; and  
 “ ’tis reported, he will be made Captain-General  
 “ of all the Forces, and Lord High Admiral, &c.  
 “ He treats all his old Friends, that daily Visit  
 “ him with great Civilities; they are all satisfied  
 “ with his Integrity, and, if God spares his Life,  
 “ I doubt not but he will be an Instrument of  
 “ much Good to the King and Kingdom. He said  
 “ publicly, that he knew my Lord *Russel* was as  
 “ Loyal a Subject as any in *England*, and that His  
 “ Majesty believ’d the same now. I intend short-  
 “ ly to wait on him my self. It would make you  
 “ laugh to see how strangely our High Tories and  
 “ Clergy are mortified, their Countenances speak  
 “ it. Were my Thesorary to be mov’d for now,  
 “ it would be readily granted. Sir *George* is  
 “ grown very humble. ’Tis said Mr. *Sidney* is re-  
 “ prier’d for Forty Days, which bodes well.

In the Third Letter he says:

“ The late Change here in publick Affairs is so Third Letter.  
 “ great and strange, that we are like Men in a  
 “ Dream, can hardly believe what we see, and  
 “ fear we are not fit for so great a Mercy as the  
 “ present Juncture seems to promise. The Sham  
 “ Protestant Plot is quite lost and confounded.  
 “ The Earl of *Mackensfield* is bringing Actions of  
 “ *Scandalis Magnatum* against all the Grand Jury-  
 “ men that Indicted him at last Assizes; and the  
 “ several Gentlemen that were Indicted in *Cheshire*  
 “ and

Fourth Letter.

“ and *Northamptonshire*, will bring their several Actions at Law against them.

In the Fourth Letter are these Expressions :

“ Contray to all Mens Expectations, a Warrant is sign'd, at last, for beheading *Colonel Sidney* on Tower-hill next *Friday*. Great endeavours have been us'd to obtain his Pardon, but the Contrary Party have carried it, which much dasheth our hopes, but God still Governs.

All which the Information says, the Defendant has done against the Kings Peace, his Crown and Dignity, &c.

Page 315.

Mr. *Blathwait* Sworn.

Mr. *Recorder*. Pray, Sir, look upon those Letters and give an Account where you had them.

Mr. *Blathwait* Evidence the Defendant own'd three of the Letters before the Council.

Mr. *Blathwait*. These three Letters, Sir *Samuel Bernardiston*, upon the Tenth of *December* before the King, and the Lords of the Council, own'd to be his Hand Writing. *I mark'd them*.

Mr. *Williams*. Did he say they were publish'd by him or sent to any one.

Mr. *Blathwait*. He did not deny but he had publish'd and sent them.

Mr. *Williams*. Did he confess it.

Mr. *Blathwait*. He did not deny it.

Mr. *Atterbury* Sworn and the three Letters shewn him.

Atterbury's Evidence to the same Effect.

Mr. *Herbert*. Did you hear Sir *Samuel Bernardiston* own them to be his Letters.

Atterbury. I apprehended him about ten Weeks ago, and carried him before his Majesty, and those three Letters were shown Sir *Samuel*, and he own'd he wrote them all three, and his Majesty ask'd him who superscribed them, and he said they were superscrib'd by one of his Servants, and so order'd to be carried to the Post-House? And when he was in my House in Custody, talking about these Letters, he said he wonder'd how they were taken, they were sent to Sir *Skippon*, or some such Name.

*Nehemiah Osland* Sworn.

Page 316.  
Osland's Evidence as to the Fourth Letter.

Mr. *Recorder*. Do you know any thing of those Supercriptions.

Osland depos'd that being Sir *Samuel*'s Servant, he Superscrib'd two of the Letters, by his order, and



and that the Third was Sir *Samuel's* Hand; That the Fourth Letter was the Deponent's Hand, and that he Transcrib'd it from a Copy given him by Sir *Samuel Bernardiston*, That he Superscrib'd it, and he believed that, and the rest were sent into the Country as directed.

*L. C. J.* Well, read them.

*Clerk Reads.* — This is directed to Sir *Philip Skippon*, Kt. at *Ipswich*, and dated *November 29. 83.* Reads — *Sir, The Return of, &c. Prout, N<sup>o</sup>. 313.*

*Sir George Jef-*  
*series.*

First Letter  
read, and the  
date of it, &c.

*Mr. Williams.* That is not Sir *Samuel's* Hand. *Osland.* I Transcrib'd it from a Copy given me by Sir *Samuel*, and which I believe was his Writing.

*Mr. Recorder.* Now go to the Second Letter.

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*Clerk Reads.* — This is directed to Sir *Philip Skippon*, Kt. at *Ipswich* in *Suffolk*, and is of his own Writing. It is dated *London* the First of *December 1683.* I am to answer yours of the 27th, and 29th, past, &c. *Prout, N<sup>o</sup>. 314.*

Second Letter  
read and the  
date of it.

*Mr. Recorder.* Read the third Letter.

Third Letter  
read.

*Clerk.* This is directed for *Mr. Edward Gael Linnen* Draper, at *Ipswich*, and dated the First of *December 1683.* *The late Change, &c. Prout, N<sup>o</sup>. 314.*

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*Clerk.* The Fourth Letter is directed to *Mr. William Cavell* at *Brightwell*, near *Ipswich*, in *Suffolk*, and dated *London* the 4th of *December 1683.* *Contrary to all Mens Expectations, &c. Prout, N<sup>o</sup>. 314.*

Fourth Letter  
read.

*Mr. Williams.* Being of Council for Sir *Samuel Bernardiston* the Defendant, observ'd to the Jury, that there was no Evidence of Sir *Samuel's* publishing these Letters: And that altho' it were true that Sir *Samuel* did send them to the Post-House, he doubted if the Writing a Letter to a private Friend, and putting it into the Post-House would be deem'd the Publishing of a Libel within the Information. He further observ'd, that there were several Things mention'd in the Information by way of Inducement which did very much aggravate the matter, and of which there was no manner of Proof. As that the Defendant being a Person of a Turbulent and unquiet Spirit, did it with

*Sir Samuel's de-*  
*fence.*

Whether a  
Letter to a  
Private Friend  
sent by the  
Post, shall be  
deem'd pub-  
lishing a Libel.

a design, seditiously to disturb the Peace, &c. And therefore he hoped Sir Samuel would be acquitted of that Part.

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L. C. J. You would have the Jury find, that he did it piously with a good Intent.

Mr. Williams. My Lord, There is a Middle Way.

If the Action implies Malice, there needs no other Proof of it.

L. C. J. No, no, Mr. Williams, Let us here none of that Doctrine. Certainly the Law supplies the Proof, if the Thing it self speaks Malice and Sedition. As it is in Murder, We say always in the Indictment, he did it by the Instigation of the Devil. Can the Jury if they find the Fact, find he did it not by such Instigation? No, That does necessarily attend the very notice of such an Action. So in Informations for Offences of this nature, We say he did it Falsly, Malitiously, and Seditiously, which are the formal Words, and if the Nature of the Thing, be such as necessarily Imports Malice, Reproach, and Scandal to the Government, there needs no Proof but of the Fact done, the Law supplies the rest; If the Fact were Indifferent in it self, then to make a Crime of it, the accidental Circumstances must be prov'd, but it needs not where the Thing Implies Malice, in its own Nature: Do you think he did this to serve the Crown?

But if the Action be Indifferent, Malice must be prov'd.

Mr. Williams. There is no Evidence given about his Malice.

L. C. J. How should any Man know I am malicious against the Government, but by my Actions.

Then Mr. Williams insisted that the Convictions mention'd in the Information should be prov'd, and they not being in Court. The Court went upon other Business, till the Records were brought: *Viz.* A copy of my Lord Russels Conviction and Attainder, and the Record it self of Col. Sidney's Attainder.

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L. C. J. All this was well enough known.

Mr. Jones. But they would give the Court all the Trouble they could.

" Then my Lord Chief Justice Summ'd up the Evidence: And observ'd that altho' Sir Samuel  
" might

“ might endeavour to Cover his Practises, and  
 “ Guild them with a pretence of Zeal for the true  
 “ Protestant Religion, and call himself one of the  
 “ Sober Party or the Godly Party, yet his Inside  
 “ was rotten; he was Factious and Seditious at  
 “ bottom, and full of Malice against the King and  
 “ Government; against both Church and State,  
 “ and every one that had not a share in the late  
 “ Bloody Conspiracy against his Majesty: That in  
 “ his Libels he faints my Lord *Russel* and Col. *Sidney*,  
 “ two of the Traytors that had been legally Con-  
 “ demn'd and Executed for it, and Insinuated that  
 “ the King was prevail'd upon by a Sham Plot,  
 “ to do Things in order to destroy the Govern-  
 “ ment, and every one of the Sober Party, as they  
 “ call'd themselves.

The Chief  
 Justices Ob-  
 servations on  
 the Evidence,  
 and the Na-  
 ture of the  
 Offence.

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“ That these Letters tell us in the Language of  
 “ the Traytor *Walcot*, that God will be sure to raise  
 “ up Instruments, by which was meant Instruments  
 “ of Rebellion, Faction and Sedition, which they  
 “ Impiously call'd *God's own Work*, That this was  
 “ the Language of those Times, when they de-  
 “ stroy'd the best of King's, and subverted the best  
 “ of Governments.

“ That they did not only aim at the Destruction  
 “ of the Civil Government, and those in Autho-  
 “ rity, but all those who had been so Dutiful to ad-  
 “ dress his Majesty, and congratulate him on his  
 “ Deliverance from the late Conspiracy, by brand-  
 “ ing them with the Names of *Abhorers*, *Tories*,  
 “ *Addressers*, *Sham Plotters*, and all the Ignominy  
 “ they could lay upon them.

“ That the Question now to be try'd by the  
 “ Jury was, whether the Defendant were guilty  
 “ of Writing these Malicious Factious Letters,  
 “ that the Defendant's Council had not offer'd to  
 “ say any thing in defence of the Letters, but that  
 “ they were as Seditious and Factious as could be  
 “ Written, and in the opinion of the Chief  
 “ Justice, They border'd upon High Treason.

Page 322.

“ The Chief Justice said he should not have  
 “ given the Jury so much trouble, in an Affair of  
 “ this Nature that had been so evidently prov'd,  
 “ but he saw it was a matter of great Expecta-  
 “ tion

The Defen-  
dant is Con-  
victed.

" tion and Consequence : And he would not that  
" we should be gull'd twice in one Age, by the  
" self same Men, and the self same Way, into the  
" same Treason and Rebellion, and all those other  
" Mischiefs brought upon us in the late Times.

Then the Jury without stirring from their Place,  
Immediately found Sir *Samuel* guilty of the Mil-  
demeanor, charg'd on him by the Information.

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*Proceedings on the Outlawry against JAMES  
HOLLOWAY, for High Treason,  
36 Car. II. 1684. B. R.*

THE Prisoner was brought by *Habeas Corpus*  
from *Newgate*, to the King's Bench Bar, and  
it was demanded of him, What he would say, why  
Execution should not be awarded against him ac-  
cording to Law ?

*Holloway.* If an ingenuous Confession of the  
Truth will merit the King's Pardon, then sure I  
have done it.

Sir Robert  
Sayer.

*Att. Gen.* If your Lordship please the Indict-  
ment may be read to him, that he may understand  
what it is, and may not go blind to Execution.

Then the whole Indictment was read to him.

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The Court  
make the Pri-  
soner an Offer  
that he may  
plead to his  
Indictment,  
though he  
was Outlaw'd  
for High  
Treason.

Sir George Jef-  
fries Chief  
Justice.

*Att. Gen.* The King is so Gracious, as to admit  
you to your Tryal, as though you were not Out-  
law'd, if you can make a Defence to the Indict-  
ment, and that is the Reason I caused the Indict-  
ment to be read to you.

*L. C. J.* You have heard the Indictment read,  
it is an Indictment of High Treason, that you,  
with other false Traytors, *Hone, Rumbald, the  
Goodenoughs, &c.* did conspire the Death of the  
King. Now, though you are in Law actually At-  
tainted, as much as if you had been Try'd and Con-  
victed, and receiv'd Judgment of Death upon that  
Conviction ; and there remains no more for the  
Court to do, but to award Execution. Yet, if you  
think you have any Thing to say, that would satisfy  
the World, or a Jury, that you are *Not Guilty*,  
the King is pleas'd to wave the Attainder by Out-  
lawry, and give you the liberty to try it.

*Holloway.*



*Holloway.* My Lord, I cannot undertake to defend my self, for I have confess'd before his Majesty, that I am guilty of many Things in this Indictment, and I throw my self on the King's Mercy.

*L. C. J.* As to his Majesty's Mercy, we must leave it to him, who is the Dispenser of his own Grace: But we must think of some convenient Day, and give such Order, that the Sheriffs see Execution done according to Law, if you will not undertake to defend your self.

*Att. Gen.* You must first pronounce the Judgment, my Lord.

*Just. Withins.* It is never pronounc'd in such a Case, Mr. Attorney.

*L. C. J.* No, We only give a Rule for Execution, the Outlawry is the Judgment, and that is upon the Record already. *Capt. Richardson,* I think *Wednesdays* and *Fridays* are your usual Execution Days in *London*: Let it be on *Wednesday* Se'night.

*Capt. Richardson.* I suppose I shall have a Rule.

*Cl. of the Cr.* You shall have a Rule, and an *Habeas Corpus* to deliver him as the Course is.

Then the Prisoner was Remanded to *Newgate*.

He answers, he has confess'd himself Guilty, and therefore it was to no purpose to offer at a Defence.

No Judgment upon an Outlawry for Treason, but a Rule made for Execution.

*The Manner of Executing a Writ of Enquiry. Between his Royal Highness, JAMES Duke of York, &c. and TITUS OATES, 18 June, 36 Car. II. 1684.* Page 325.

HIS Royal Highness having brought his Action upon the Statute *De Scandalis Magnatum*, against *Titus Oates*, and the Defendant having suffer'd Judgment to go against him by Default, a Writ of Enquiry was taken out, directed to the Sheriffs of *Middlesex*, to inquire by a Jury of that County, what Damages the Plaintiff had sustain'd. And upon a Motion made in the Court of *King's Bench*, a Day was given to the Defendant, to shew Cause why that Writ of Enquiry should not be Executed at the Bar of that Court; but the Defendant

A Writ of Enquiry into the Duke of York and Titus Oates, executed at the King's Bench Bar, the High Sheriff present, and cover'd. Fifteen Jurors sworn.

dant having shewn no Cause to the contrary, it was order'd it should be executed at the Bar on this Day, and that the High Sheriff should attend the Execution of the Writ in Person. Accordingly the High Sheriff came into Court, and being plac'd at the Table, at the Judges Feet, was cover'd during the Execution of the Writ.

Then the Under-Sheriff proceeded to swear the Jury, and having sworn Twelve, he was directed by the Court to swear three more.

Sir Charles Lee, three other Knights, ten Esquires, and John Kirk, Gentleman were sworn.

Under-Sheriff. Gentlemen, you that are sworn, hear the King's Writ.

Then the Writ of Enquiry was Read.

Declaration  
per Scandal.  
Magna. for  
saying the  
Duke was a  
Traytor.

In the Writ is recited the Declaration, which sets forth, That whereas a Statute was made in the 2d Year of Richard the IId, prohibiting the Slandering the Great Men and Peers of the Kingdom; and the Plaintiff being the King's only Brother, and a Peer, the Defendant, the 4th of December, in the 35th Year of the King, in a Discourse between him and some other Persons, about a Letter that the Defendant had then in his Hands, publicly, falsely, and with an intent to Scandalize the Plaintiff, spoke these English Words. *This Letter (meaning the Letter then in the Defendant's Hands) cost me Nine Pence, and might have been brought for a Penny. I know no Body is the better for it, but that Traytor James Duke of York, meaning the Plaintiff.* And that the Defendant intending further to scandalize the Plaintiff, the 6th Day of December, in the Year abovesaid, upon a Discourse had, and and mov'd, by and between the Defendant, and some other Persons, in the presence of divers venerable Persons, said these Words of the Plaintiff--- *The Duke of York (meaning the Plaintiff) is a Traytor.* Whereby the said Duke was very much hurt and scandaliz'd, and great Discords had arisen between the said Duke and divers Nobles, and Great Men, &c. to the Plaintiff's Damage One Hundred Thousand Pound.

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Under-Sheriff. You are to inquire what Damages his Royal Highness, the Plaintiff, has sustain'd, by

by means of the Premises : As also, what Costs he has been at in this Suit.

Then Mr. *Hawkes* open'd the nature of the Action, and Mr. *Attorney* said as follows,

*Att. Gen.* You observe, Gentlemen, the Words are acknowledg'd by the Defendant's Default in not Pleading, and you are to inquire only of the Damages. And I think there will need nothing to be said for the Aggravation of them, they are Words of the highest Nature, in respect of Slander and Scandal, that can be spoken or thought of, accusing him of *Treason*. We shall only call you some Witnesses, to prove this way of Discourse, to be his constant Habit in all Places, and among all Persons and Company, inveighing against the Government, and particularly against his Royal Highness the Plaintiff; and then you will, I know, give such Damages, as may be fit to repair the Plaintiff's Honour.

*Sir Robert Sawyer.*

*Sol. Gen.* Swear Mr. *Smith*: (*which was done.*)

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*Smith.* At the last *Westminster* Parliament, as I was sitting in a Coffee-House, I saw Mr. *Oates*, he had a Letter in his Hand, and he said, *This Letter cost me Nine Pence, it might have been brought for a Penny; I know no Body that is the better for it but a Traytor*, to the best of my Remembrance, he said the Duke of York.

*Smith's Evidence of the first Words laid in the Nar.*

Mr. *Penniston Whaley* was Sworn.

*Whaley.* I was at the Bishop of *Ely's* Table, at *Ely* House, either the *Easter* or *Whitsunday* after Sir *Thomas Gascoign's* Tryal. I had receiv'd the Sacrament at the Chapel there that Day, and so had Dr. *Oates*. And some Discourse happening at the Table, about Sir *Thomas Gascoign's* Tryal, *Oates* fell foul upon the Jury, and said, *They were a Company of profligate Villains, and he would have them Attainted.* I said, Doctor, you are a good Man at a Matter of Fact, but I doubt you are not so at a Matter of Law. Then we came to high Words, and among other things, he said, *The Duke of York was a Traytor.* I said, Doctor, you lie under a great Error, I suppose, by mistaking a Statute made against Popery : Says he, *No Matter for that, I say he is a Traytor.* And both of us

*Whaley's Evidence of the last Words, spoken at the Bishop of Ely's Table.*

## The T R T A L of

growing pretty warm, he call'd his two Men, that us'd to follow him up and down, to his Assistance. I said, there is no Body will hurt you: Do you think the Bishop of Ely's Table is not a Protection for any Body that comes here?

L. C. J. Was the Bishop at the Table then?

Whaley. He was at the Table, but at a great distance from us; the Doctor and I sat at the lower end of the Table. Afterwards, I beg'd the Bishop of Ely's Pardon for being so hot and loud at his Table: Says the Bishop, *I thank you kindly for it, none of us dare talk with him.*

Edward Johnson was Sworn.

Johnson's Evidence of Scurrilous Words not laid in the Nar.

He depos'd, that meeting Oates the 23d of August, 1680. The Deponent said, All Things will go well now, for there is a Parliament to meet in a little time; and Oates answer'd, *No, not till York is banish'd or hang'd. He has a good Brother, but he takes all the Courses in the World to undo him.*

Randal Bowring was Sworn.

Bowring proves other Words not laid.

He depos'd, that in October, 1679. he was at Dinner with Oates, at his Lodgings at Whitehall, and a Gentleman saying, in Case his Royal Highness were a Papist, how should we be secur'd in Case he came to the Crown, that he would not bring in Popery? The Doctor reply'd, *I would not have you trouble your self about that, for he shall be hang'd before that time.* That at another time, Oates having Preach'd at Foster-Lane, the Church-Wardens invited him to Dinner. He ask'd, *If any of them had Din'd with James Duke of York, at any of the Feasts of the City, when the Duke used to come sometimes?* And none of them answering him, Oates reply'd, *He would not dine with any Man that had Eat with the Devil,* and so went and Din'd with a Brazier by London-Wall.

Mr. Fairfax was Sworn.

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Fairfax deposes, Oates endeavoured to get the Duke presented for a Papist, &c.

He deposed, that in my Lord Chief Justice Scrogg's time, there was a Presentment to be brought in by the Grand-Jury, against his Royal Highness, for being a Papist, and not coming to Church, and that this Oates was the main Prosecutor of it. That the Grand-Jury being dismiss'd, the Deponent told Oates, that now he was disappointed; and Oates reply'd,



reply'd, *Oh, we will do well enough, there will be a Sessions after the Term, and there we will at him again; and we will have no more Regard for him, than if he were a Scavenger of Kent-Street.*

Mr. Philips was Sworn.

He deposed, that in January, 1678. he was at Oates's Lodgings in Whitehall, and Oates said, *He hop'd to see our Master James (meaning the Duke of York) at the Bar of the House of Commons; and it would be no Disparagement to him to appear there, for there were better Men Members of that House, than he was.*

Philips's Evidence.

William Ashlock was Sworn.

He deposed, that as Oates was Dressing, one Morning in Easter Term, 1682. Oates said, *He was going out to draw up a Bill of Indictment against the Duke of York, (but the Deponent heard afterwards he was otherwise advis'd.) That he said also, The City of London was fir'd by the Duke of York's Order, and the Forces at Blackheath were to have plunder'd the City, and kill'd all the honest Protestant Dissenters there, and the Duke of York was to have Headed those Forces; and this he would prove, if ever they could get a Parliament to their Mind. And he said, They should take away the Post-Office from the Duke of York, and give it to the Duke of Monmouth.*

Ashlock deposes, Oates said the Duke fir'd the City, and that he would Indict him.

That at another time, he said in Company, *The Duke of York was a Son of a Whore, and he should live to see him hang'd; and if they could but get a Parliament to their Mind, they would soon send the Duke, and all his Gang, out of England; for he must never expect to succeed to the Crown.*

That Oates said he was a Son of a Whore, and should not succeed to the Crown.

Capt. Cresset was Sworn.

That as he was waiting one Morning at the Duke's Lodgings, Oates said to him, *You will never leave, till you have lost your Reputation: You have been with James, York I mean, he is a Rascal, a Papist, and a Traytor, and I hope to live to see him hang'd.*

Capt. Cresset's Evidence. Page 330.

Sir William Jennings was Sworn.

He deposed, that being in a Tavern at Oxford, with Oates, when the Parliament sat there; and the Duke's Health being proposed, Oates said, *Do not drink York's Health, he has ruin'd the Nation,*

Sir William Jennings's Evidence of other Words,

*and if the Devil has a Place in Hell more hot than others, I hope he will bestow it upon him.*

Mr. Warrop was Sworn.

Warrop's Evidence.

He deposed, that meeting *Oates* afterwards, and reproving him for the last recited Expressions, he answer'd, *The Duke was a Traitor, and in the Plot;* and told the Deponent, *He was a Yorkist, and he would remember him for it.*

Mr. Charles Chapman was Sworn.

Chapman's Evidence of what he said, when a Plea was demanded of him.

He deposed, that he went along with Mr. *Swift*, the Duke's Attorney, when he went to the Defendant, *Oates*, to demand a Plea, That *Oates* ask'd Mr. *Swift* *If he were the Duke's Attorney?* And *Swift* answering, *Yes: Oates* said, *He did not value the Duke nor his Attorney neither; he would plead as he should see Cause, and that he neither lov'd the Duke nor fear'd him. That may be he might be in here [The King's Bench] for 100000 l. but if ever a Parliament sat, he did not question but to have some Body else in his Place.*

No Body appearing for the Defendant, *Oates*, my Lord Chief Justice said,——

Sir George Jeffries.

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The Chief Justice's Observations upon the Evidence.

L. C. J. " Gentlemen of the Jury, though it is  
" not your Business to inquire whether *Oates* spoke  
" these Words or no (for by letting Judgment go  
" against him by Default, he doth in Law confess  
" the Words) but you are to inquire what Damages  
" are fit to be given to the Plaintiff, by reason  
" of these Words. Yet, inasmuch as this is a Case  
" of an extraordinary Nature, Weight and Moment,  
" having relation to so great a Prince, his  
" Royal Highness, the King's only Brother, requires  
" this extraordinary Solemnity; it not having  
" been usual heretofore, to have Writs of Enquiry  
" executed at this Bar. But the Occasion is  
" extraordinary, such as has not happen'd before  
" this Age, this corrupt, this profligate Age, wherein  
" we live; and wherein common, ordinary Fellows,  
" the meer Scum and Scoundrels of the Factionous  
" Party, have taken the liberty to reproach and  
" calumniate Magistracy and Government, and the  
" greatest Personages concern'd in it; not sparing  
" even Majesty it self, nor him who is next in  
" Degree to his Sacred Person, his only Dear  
" and

“ and Royal Brother. And therefore, as the Case  
 “ is extraordinary in its Nature, so ought the Ex-  
 “ ample of it to be made as Publick as can be, in  
 “ order to satisfy all People, what a sort of Fel-  
 “ low this Defendant is, who has been so much  
 “ ador’d, and look’d upon with an Eye of Admi-  
 “ ration, Courted with so wonderful an Affection,  
 “ and I had almost said, Hosanna’d by the Fa-  
 “ ctious.

“ Such as he, ought to be made Publick Exam-  
 “ ples of, and therefore the King’s Council have  
 “ desir’d that this Cause might be Canvass’d here  
 “ at the Bar; and the Defendant, as he has made  
 “ himself Eminent for some particular Qualificati-  
 “ ons, might be made a Publick Example for this  
 “ Offence.

“ Thus the Writ comes to be executed here.  
 “ Now though the Words laid in this Declaration,  
 “ are Words that do import in themselves, so much  
 “ Scandal and Reproach, so much Malice and Ve-  
 “ nom, that they need no Aggravation; and his  
 “ suffering Judgment to go by Default, shews they  
 “ are no way to be extenuated. Yet, however, to  
 “ satisfy all People that have any Inclination to be  
 “ satisfied, that this Prosecution is highly Reaso-  
 “ nable, nay, absolutely Necessary; they come  
 “ here, and give you an Account, that these in the  
 “ Declaration are but a small part of the scandalous  
 “ and malicious Words that the Defendant had us’d  
 “ concerning the Plaintiff. And indeed, it doth  
 “ plainly appear, that the Malice of the Defendant  
 “ is attended with all the most Unchristian and  
 “ Uncharitable, as well as Disloyal and Disobedi-  
 “ ent Circumstances, that any thing can be; with  
 “ Design to traduce and disparage a Subject so  
 “ Loyal, and a Person so Great and Illustrious as  
 “ his Royal Highness.

Then the Chief Justice having summ’d up the  
 Evidence, the Under-Sheriff said, *Gentlemen, lay*  
*your Heads together, and consider of your Verdict,*  
 Which they did, standing at the Bar.

*Under-Sheriff.* What Damages do you find?

*Sir Charles Lee.* Full Damages an Hundred Thou-  
 sand Pounds, and Twenty Shillings Costs,

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Page 334.

100000 l. Da-  
 mages given  
 by the Jury,

Which Verdict being Recorded in an Inquisition indented, taken under the Hands of all the Jury, was afterwards annex'd, as the Return to the Writ of Enquiry.

Page 334. *Proceedings on the Outlawry, against Sir THOMAS ARMSTRONG 14th June, Trin. 36 Car. II. 1684. B. R.*

The Prisoner brought by Habeas Corpus to the King's Bench Bar.

*Sir Thomas Armstrong was this Day brought by Habeas Corpus, to the Kings Bench Bar, and the Return of the Writ was Read, by which it appear'd, he was in the Custody of the Keeper of Newgate, by a Warrant from the Honourable Sidney Godolphin, Esq; one of his Majesty's Principal Secretaries of State, directed to Capt. Richardson, Keeper of Newgate, commanding him to receive into his Custody, from on board the Catherine Yatch, the Person of Sir Thomas Armstrong, Kt. Outlaw'd for High Treason, &c. Dated the 10th of June, 1684.*

Sir Robert Sawyer.

*Attorney General.*

Sir George Jeffries.

He is Arraign'd upon the Outlawry.

**M**Y Lord I pray an Award of Execution for the King, against Sir Thomas Armstrong, on the Outlawry.

*L. C. J.* Let the Outlawry be filed first.

Then Mr. Attorney, again, pray'd Execution might be awarded on the Outlawry; but the Chief Justice order'd him to be arraign'd on the Outlawry.

*Clerk of the Crown.* Thou hast been Indicted, &c. for conspiring against the King's Majesties Life and the Government, and for not appearing to Plead and Try that Indictment, thou standest Outlaw'd, and thereby attainted of the same Treason. What hast thou to say for thy self, why Execution should not be awarded against thee upon that Attainder, according to Law.

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He desires he may be try'd, it being not a Year since he was Outlaw'd.

Sir Thomas desir'd he might have the benefit of a Tryal according to a Clause in a Statute of Edw. VIth. Whereby it is provided, *That if the Party Outlaw'd, shall within one Year after the Outlawry pronounc'd,*



pronounc'd, yield himself to the Chief Justice, and offer to Traverse the Indictment, He shall be receiv'd to Traverse it, and if he be found not Guilty, he shall be acquitted and discharg'd of the said Outlawry, and of all Penalties, &c. as though no such Outlawry had been.

*Att. Gen.* I suppose, Sir Thomas will now shew he yielded himself to your Lordship.

*Sir Thomas Armstrong.* The Year is not yet out, and therefore I come time enough now. And here I am, and desire the benefit of this Act.

Deny'd because he did not Surrender but was taken.

*L. C. J.* You did not render your self according to that Act, but are brought a Prisoner before us now.

*Sir Thomas Armstrong.* My Lord, I beg I may have Council to plead for me in this Case.

*L. C. J.* For what Reason, We are of Opinion, It is not a matter of any doubt

*Sir Thomas Armstrong.* A little while ago, there was one in this Place had the benefit of a Tryal offer'd him, if he would accept it.

*L. C. J.* That was the Grace and Mercy of the King, and he may if he please extend the same Grace and Favour to you, but that is not our business, We are satisfied, that according to Law, We must award Execution upon this Outlawry.

*Mrs. Matthews.* My Lord, I hope you will not Murder my Father, this is Murdering a Man.

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*L. C. J.* Who is this Woman? Marshal, Take her into Custody.

*Matthews the Prisoner's Daughter* Exclaims against the Court, and is committed.

*Mrs. Matthews.* God Almighty's Judgments light upon you.

*L. C. J.* God Almighty's Judgments will light upon those that are Guilty of High Treason, but Clamours never prevail upon me, I am Clamour Proof, and will never fear to do my Duty.

Then Mr. *Attorney* shew'd that Sir Thomas did not deserve the same Favour that *Holloway* had, for that after the disappointment of the Conspirators by the Fire at *Newmarket*, the Prisoner was one of the Persons, who actually engaged to go and destroy the King upon his coming to Town, as appear'd on the Tryals of some of the other Conspirators,

The Prisoner, one of those who engag'd to kill the King.

*L. C. J.*

## The T R Y A L of

L. C. J. We are not to meddle at all with the Evidence. All we have to do, is to Consider of the Record before us; And what the Prisoner says against our awarding Execution. We have Consider'd whether this be a Yielding within the Statute; And we think it is not, nor can be by any means.

He complains  
his Money  
was taken  
from him.

Sir Thomas complain'd, that when he was taken, they Robb'd him, and took all his Money from him, so that he had no Money to Fee Council, and he knew Lawyers would not plead without Money.

Execution a-  
warded.

The Chief Justice said he knew nothing at all of that matter, and order'd, Execution to be done the *Friday* following.

Mrs. Matthews  
Releas'd.  
The Attainder  
Revers'd.

Upon a Petition to the Court, Mrs. Matthews was Released out of Custody without Fees.

This Attainder was Revers'd in B. R. on a Writ of Error 6 W. 3. 4 Mod. 366.

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*The Tryal of THOMAS ROSEWELL, for High Treason, at the King's Bench Bar, the 18th of November, 36 Car. II. 1684.*

The Indict-  
ment was for  
Treason, and  
remov'd out  
of the County  
of Surrey, into  
the Kings  
Bench by Ha-  
beas Corpus.

*The 23d of October, 1684. being the First Day of the Term, Mr. Attorney General mov'd the Court of King's Bench, for an Habeas Corpus, directed to the Keeper of the Gatehouse, to bring up the Body of Thomas Rosewell, Clerk, to be Arraign'd upon an Indictment of High Treason, found at a late Sessions of Oyer and Terminer, at Kingston, in Surrey.*

*The 25th of October, Mr. Rosewell was brought to the King's Bench Bar, upon the Habeas Corpus, and Arraign'd.*

It is founded  
on the 13th.  
of Car. II.

“ THE Indictment set forth that the said  
“ *Thomas Rosewell*, the 14th Day of *Septem-*  
“ *ber*, in the 26th Year of the King, in the Parish  
“ of *Rotherhith*, in the County of *Surrey*, did Pro-  
“ pose, Compass and Imagin, to sow Sedition,  
“ and raise Rebellion against his Majesty, and to  
“ depose him, and put him to Death: And to ac-  
“ complish

" accomplish his said Traiterous Purposes, He did  
 " at the Time and Place aforesaid, Malitiously and  
 " Traiterously, in a certain unlawful Assembly, in  
 " the presence and hearing of divers of the King's  
 " Subjects, Speak, Assert, and Declare the following  
 " Words, (*viz.*) *That the People made a flocking*  
 " *to the King, upon pretence of healing the King's*  
 " *Evil, which he could not do, but that they* (mean-  
 " ing himself and other Traiterous Persons the  
 " King's Subjects,) *were the Persons they ought to*  
 " *flock to, because they were Priests and Prophets,*  
 " *who by their Prayers could heal the Dolours and*  
 " *Griefs of the People. That they had had two*  
 " *wicked Kings together, (meaning King Charles*  
 " *the I. and King Charles the II.) who had per-*  
 " *mitted Popery to enter in under their Noses, whom*  
 " *they could resemble to no other Person but to most*  
 " *wicked Jeroboam; And that if they (meaning the*  
 " *said Evil dispos'd Persons unlawfully assembled)*  
 " *would stand to their Principles, he did not fear but*  
 " *they would overcome their Enemies* (meaning the  
 " King and his Subjects,) *as in former Times with*  
 " *Rams-Horns, broken Platters, and a Stone in a*  
 " *Sling: All which was laid to be against the Duty*  
 " of his Allegiance, the Kings Peace, &c.

Mr. Rosewell desir'd the Indictment might be read in *Latin*, and it was read accordingly, Then he desir'd it might be read again in *English*, and the Words were read to him that were laid in the Indictment by themselves, without the former *inuendo's*: After which the Prisoner pleaded *Not Guilty*, and a Rule was made for his Appearance again, at the Bar, the 18th of *November*, in order to his Tryal, and the *Venire* was directed to be made returnable the same Day.

Mr. Rosewell desir'd he might have Council, assign'd him to come to him.

The Court told him, he could have no Council, by Law, in Capital Cases, unless matter of Law should arise in the Tryal, and then they would assign him Council.

Then he desir'd his Wife and Children might come to him, and the Court granted they should be with him, in the presence of the Keeper, or he might

The Words in the Indictment laid to be Treasonable.

Page 1001.

The Indictment Read in *Latin*, at the Prisoner's Request.

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A Rule made for his appearance on the Day appointed for his Tryal.

The Prisoner may not advise with Council in Capital Cases, unless matter of Law arise upon the Tryal.

Page 1003.

A Prisoner brought by *Habeas Corpus* to the King's Bench, may be remanded to the County-Jayl where he was Indicted, or to any Prison in the County where the King's Bench sits.

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The Tryal begins.

Page 1005.

Page 1006.

The King's Witnesses depose, that the Words laid were spoke by the Prisoner at a Conventicle.

might see any other Friend, and directed he should have *Subpœna's* out of the Office for his Witnesses.

Mr. Attorney doubted whether the Prisoner ought not to be committed to the *Marshalsea*, being the Prison for the County; to which the Clerk of the Crown answer'd, It might be so, but since the *King's Bench* sits in *Middlesex*, he might be remanded to the *Gatehouse*, and he was sent thither accordingly.

*Tuesday* the 18th of *November*, 1684. the Prisoner was brought by a Rule from the *Gatehouse* to the *King's Bench* Bar, to his Tryal, at which all the Judges of that Court were present.

The Jurors being called, after the Prisoner had challeng'd several of them peremptorily, Twelve were at length Sworn, being all Men of Quality, and they were charg'd with the Prisoner, who desir'd the Indictment might be read again in *Latin*, and it was read accordingly. The Prisoner beginning a Speech expressing his Abhorrence of the Crime laid to his Charge, the Court told him he spoke out of Time, and must reserve what he had to say till afterwards. Then Mr. *Phipps* open'd the Indictment, and Mr. Attorney open'd the Evidence; and my Lord Chief Justice observing some of the Council talking among themselves, and to some of the Jury, he charg'd the Council, and told the Jury they should not take Notice of any private Insinuations, or of any thing but what was communicated to them publickly in Court. The Prisoner desiring the King's Evidence might be examin'd apart. *It was Granted.*

Then *Elizabeth Smith* was Sworn.

She depos'd, That the Prisoner preach'd at several private Houses, and had one publick House of his own in *Salisbury-street*, near his own Dwelling, in *Rotherhith*, and there us'd to be Three or Four Hundred People assemble there at a Time: That the first Time she took Notice of his speaking against the Government was the 17th of *August*, when in his Prayer after Sermon, *He wiss'd he might not offend God in not Praying for the King, but that it might please God to open his Eyes, and the Times might turn.* That the next *Sunday* he was speaking



speaking of *Sodom* and *Gomorrhah*, and observing that if there had been Ten Righteous Persons the City had not been destroy'd; *But he did not mean Recorders and Lord-Mayors*, he said: That upon the 14th of September, when he was Preaching, he said, *The People made a flocking to the King to cure the King's-Evil, which he could not do; but, says he, We are they, they should flock unto, for we are Priests and Prophets, that by our Prayers can cure their Grievances:* And he said, *We have now had Two wicked Kings together, which have permitted Popery to come in under their Noses, and could be compar'd to nothing but most wicked Jeroboam:* And when he had Preach'd a good while again, he said, *If they would stand to their Principles, he did not fear but they should overcome their Enemies, as in former Times, with broken Platters, Rams-Horns, and a Stone in a Sling.* That he used these Expressions in a Sermon at Captain *Daniel Weldy's* House, and there were Two lower Rooms and Two Chambers full of People there, (she thought there might be several Hundreds) and the Prisoner stood in a Door, so that his Voice might be heard above and below.——That one *Mr. Paul Shed*, a Brazier, let the Deponent in, and was very angry with her, for coming in Pattens, because they made an Impression in the Ground, and gave Notice there was Company there.

*Mr. Recorder.* How came you to find out there was such a Meeting-Place?

*Smith.* I found it out by dogging People as they went along; and there were People set at *Cherry-Garden-Stairs* to give Notice, and sometimes I went to *Mr. Shed's* House to enquire.

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*L. C. J.* What he was Clerk of the Conventicle, Was he not?

*Smith.* I never heard him say *Amen*, but have heard him expound in the Conventicle sometimes.

*L. C. J.* Oh! he was a Journey-man-Preacher, it seems.

*Att. Gen.* How did he use to treat the Government in his Preaching at other Times.

*Rosewell.*

Other Words permitted to be prov'd that were laid in the Indictment.

*Rosewell.* Are these Questions proper to be put, not relating to the Words I am charg'd with; How can I be prepar'd to answer them?

*L. C. J.* Yes, Very proper, to give an Account of the Disposition of your Mind.

*Rosewell.* My Lord, I cannot sift the Witness like a Lawyer; Will your Lordship give me Leave to speak to her as a Divine?

*L. C. J.* Ask her what Questions you will, but we will have none of your Preachments here, we don't intend to make a Conventicle of the King's-Bench Court.

*Rosewell.* Are you sensible what an Oath is, Mistress, and the great Obligation you are under by it, to testify nothing but the Truth, as you will answer it to the Great God.

*L. C. J.* Look you, Mr. *Rosewell*, do not Preach, it is the Business of the Court to let the Witness know what Obligation she lies under. *Then his Lordship shew'd the Obligation of an Oath.*

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*Rosewell.* I humbly thank your Lordship for what you have said to her: Pray, Mistress, Did you come alone to the Meeting the 14th of September? Or, Who came with you?

*Smith.* Mrs. *Hilton* came with me, and another Gentlewoman? Mrs. *Hilton* lay with me the Night before, and we came there before Seven a-Clock: before you came thither.

*Rosewell.* Pray what Room were you in?

*Smith.* We were in a Room up one Pair of Stairs, that had a Bed in it.

*Rosewell.* How did the Service begin?

*Smith.* You made a long Prayer of about Three Quarters of an Hour, as you us'd to do, and then you took your Text out of the 21st Chapter of *Genesis*, to the best of my Remembrance.

*Rosewell.* Upon what Occasion were these Words spoken, if there was no Chapter read?

*Smith.* You always took a whole Chapter, and expounded all along.

*Rosewell.* Upon what Verse of the Chapter were these Words spoken, about Flocking to the King to cure the King's-Evil.

*Smith.*

*Smith.* I can't be punctual to the particular Verse: It was within Five or Six Verses of the Beginning, I believe.

*Rosewell.* Then upon what Occasion came in the Words about the Two Wicked Kings?

*Smith.* In Preaching, you brought it in by other Proofs.

*L. C. J.* Who can tell the Occasion; What Reason has any Man to speak Treason? I tell you there is none to be given for it.

*Smith.* One of your Proofs was concerning *Dalilah* and *Sampson*, and you apply'd it to the King's using of Women; and said, you did not question, but in the End, the Whores would serve the King, as that Whore *Dalilah* did *Sampson*.

*Rosewell.* Pray upon what Account came in the Two Wicked Kings and *Jeroboam*?

*Just. Holloway.* Do you think any of your Auditors can give an Account of the Connexion of your whole Sermon.

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*L. C. J.* Can any Man alive give an Account how you come to Ramble and talk Treason?

*Rosewell.* Can you tell, Mistress, when I spoke of standing to their Principles and the Rams-Horns, &c.

*Smith.* That was in the latter End of your Sermon.

*L. C. J.* When you had said there were Two Wicked Kings, then presently you were for standing to your Principles and overcoming your Enemies.

*Rosewell.* Pray, Mistress, were these Words spoke one after another?

*Smith.* No, They were not; but they were spoken all at that Time.

*Rosewell.* Where did you first write down the Words?

*Smith.* After I came home I set them down to a Tittle, as near as I could remember.

*L. C. J.* Did you set them down just as he spoke them, in substance?

*Smith.* Yes, I did in substance, as near as I could remember.

*Rosewell.*

*Rosewell.* What was said between the several Expressions you mention.

*Smith.* You said there was a Word call'd *Canting*, and you did not understand what was meant by it, unless it were this: You said you chanced to go by one of the great Churches, where peeping in, you saw a Man with a white Surplice, and the Organs were going, and they were Canting and Singing the Littany, the Creed, and the Ten Commandments, with a *Ha, ha, ha, ha*; for your Part you were asham'd to hear it, and this you said was all the Canting you knew.

*Rosewell.* Did you confer with any body about the Words?

*Smith.* Not till I discover'd them to the Recorder.

*Query.* If an Indictment is for Words, if the very Words must not be attested to support it?

*Rosewell.* And you swear these were the Words that I spoke?

*L. C. J.* If she swear the substantial Part, it is enough, though she do not swear the very Words.

*Rosewell.* What Day do you say I preach'd in the publick Meeting-House.

*Smith.* To the best of my Remembrance, it was the 10th of *August*.

*Rosewell.* Have you not Sworn against other Conventicles?

Page 1010.

*Smith.* Yes, Several; though I never heard any thing spoken in any of them against the King, but in yours.

*Rosewell.* Did you Swear a Conventicle against Mr. *Hales*.

*Smith.* Yes, And his Wife confess'd it, and he paid the Money without making any Appeal.

*Rosewell.* What other Conventicles have you been at?

No Question may be ask'd a Witness, where the Answer may render him liable to a Penalty.

*L. C. J.* You must not ask her any Question that will make her obnoxious to a Penalty.

*Rosewell.* Were you not Witness of a Conventicle at one Mrs. *Batho's*.

*Smith.* Yes, And she confess'd it.

*Rosewell.* Was there not some Money offer'd you?

*L. C. J.* That is not to be ask'd; it tends to make her accuse her self.

*Att.*



*Att. Gen.* Since he has started such a Question, Have you been tamper'd with and offer'd any Money, and for what?

*Smith.* One *Cartwright*, and one *Norton* spoke to me about Mrs. *Batho's* Business, and afterwards of *Rosewell*: They said, they wondred I would have my Hands in any Man's Blood; and that I had better take 20 l. and not appear against him; they did not know any body would give it, but I had better take it. I said, I should speak nothing but the Truth, and had given my Evidence already, and would not retract it.—— And Yesterday Morning one brought a Letter to my Brother, and said, If I would not come in against Mr. *Rosewell*, I should have 200 l. paid down To-Morrow; not that *Rosewell* knew of it, or would give it me, but it was a Wager that was laid; some having laid he would be hang'd, and others that he would not.

*Rosewell.* Was Mrs. *Hilton* with you in the Room, when the Words I am charg'd with were spoken.

Page 1011.

*Smith.* Yes, She sat upon the Bed with me, and I pull'd her by the Sleeve when the Words were spoken, to take Notice of them.

Mrs. *Hilton* was Sworn.

She depos'd, That she lay with Mrs. *Smith* on Saturday Night, and next Morning, being Sunday, the 14th of September, they went, together, to one Capt. *Daniel's* House, near West-lane in Rotherhithe, and one *Paul Shed* let them in, and found Fault with their coming in Pattens, because it would give a Distrust of People's coming there; that they went up Stairs, and set themselves down upon a Bed, and Mr. *Rosewell* Preach'd upon the 20th or 21st Chapter of *Genesis*, concerning *Abraham* and *Sarah*; and in his Discourse he said, *The People went flocking to the King*, &c. as Mrs. *Smith* had depos'd, and added, that the Congregation consisted of Four or Five Hundred People. She also remembered his Expressions concerning *Canting*, before-recited by Mrs. *Smith*. And she depos'd farther, that about Two a-Clock they return'd Home, and Mrs. *Smith* presently wrote down the Words, and afterwards

the Deponent and Mrs. *Smith* went to a *Quakers* Meeting.

*L. C. J.* Did Mr. *Rosewell* hold it from Seven till Two? he is pretty long Winded.

*Hilton.* No, he went to Dinner, and left us there; and abundance of the Congregation eat Sweet-meats or Biskets, &c. but we had nothing; I never was at a Meeting before, nor ever Convicted any of them.

Page 1012.

*Rosewell.* Was not your Name *Shaftoe*?

*Hilton.* Yes, but it is *Hilton* now.

*Rosewell.* Whose House was it you was at the 14th of September?

*Hilton.* They said it was Capt. *Daniel's*; it was near *West-Lane*, and a little Way from it is a Bridge. And I remember very well there were Shutters to the Windows, and the Sun came in, and you desir'd they might be shut; and then you desir'd part of the Shutters might be open'd, because it was not light enough.

*Rosewell.* Was it in an upper or lower Room, that I Preach'd?

*Hilton.* You were up two pair of Stairs.

*Rosewell.* If you were within the Room, how could you see what Number the Congregation consisted of?

*Hilton.* When you went to Dinner, I endeavour'd to get out, being frighted with hearing such Stuff.

*Rosewell.* How did the Exercise begin?

Page 1013.

*Hilton.* You made a kind of a Prayer, I don't understand your Way (for I was never at a Meeting before) and took your Text out of the 20th or 21st Chapter of *Genesis*; the Story was about *Abraham* and *Sarah*, how he bid her call her self his Sister; and you said at last, *Abimelech* made *Abraham* a Present, which you thought might be about Twenty Guineas.

*Rosewell.* What Psalm was Read, or what Chapter did I Preach upon in the Afternoon?

*Hilton.* I cannot tell that truly.

*Rosewell.* Upon what Occasion were the Words about flocking to the King to cure the Evil?

*L. C. J.*

*L. C. J.* You could have no Occasion from that, or any other Text, to talk of the King, or the King's Evil.

*Rosewell.* But I speak of the Coherence of the Discourse, my Lord, what part of the Chapter led to it.

*L. C. J.* You Preach without any Coherence; it was the Devil taught you to talk Treason. The Indictment tells you, That you had not the fear of God before your Eyes, but were mov'd and seduc'd by the Instigation of the Devil to do it.

*Mrs. Joan Farrar* was Sworn.

*Att. Gen.* What did you hear the Prisoner say?

*Farrar.* I was not in the Room with him; he was above, and I was below in the Parlour, but I heard him say, *It was not the King that cur'd the Evil, but, says he, it is we they should flock to; for we are they which are the Priests and the Prophets, that by our Prayers do cure the Grievances of the People.* He said also, *That we had had two wicked Kings together; and bid the People stand to their Principles, and in time they should overcome their Enemies.*

Page 1014.

*Mr. Recorder.* Do you remember he said any Thing against the Government at any other Time?

*Rosewell.* I beseech your Lordship, may these Leading Questions be ask'd?

*L. C. J.* 'Tis not a Leading Question.

*Farrar.* In a Mill by *Rotherhithe* Wall, at one *Hudson's*; he pray'd, *That he might not offend the Lord in not Praying for the King, but the Lord might please to open his Eyes, or turn the Times.* And at *Paul Shed's* I heard him say, If it had not been for a certain Great Man (meaning *Bloodworth*, the Lord Mayor) the Fires of *London* and *Southwark* had not been; and after he had Preach'd concerning the Fire, he said, It was a fine Sight to see Fools in Scarlet Gowns; and he heard the Recorder was to be made a Judge.

*Rosewell.* At whose House was the Meeting the 14th of September?

*Farrar.* It was at the end of *West-lane*, at one *Daniel's*.

Rosewell. Did you see me there?

Farrar. No, but I knew your Voice.

Rosewell. Were all these Words that you say were spoken the 14th of September, spoken upon that Chapter in *Genesis*?

Farrar. Truly, Sir, I think it was upon your first Text.

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One Cook, an Officer, was call'd, to shew what a Disturbance there was, when he went to execute a Process against those Meetings in *Rotherith*; but my Lord Chief Justice said that was nothing to the Purpose, and he was set aside.

Mr. Rosewell has the Indictment read to him in Latin a third time at his Request, and objects to the several Phrases in it.

Then the Court acquainted Mr. Rosewell, that he might enter upon his Defence; and Mr. Rosewell desir'd the Indictment might be read again in Latin. After which he objected to the Latin, that *Morbus Regni Anglici* was the Disease of the English Kingdom, and could not be made to signify the King's Evil.

L. C. J. No, no, It is *Morbus Regni Anglice*, the King's Evil; there being no apt Word in the Law for that Distemper, they help it with an *Anglice*.

Rosewell. But, my Lord, there are proper Words for the Disease, as *Struma* and *Scrofula*, and not *Morbus Regni*.

L. C. J. Physicians may use those Words, but we must keep to the Legal Names and Phrases, and where we have not a proper Word, we use an *Anglice* to express what we mean.

Rosewell. Then there is another Phrase I object to, viz. *Nos habuimus nunc duos iniquos Reges insimul*; this cannot be understood of two Kings one after another, but *insimul* makes them to be both at once. These two Words, *insimul* and *nunc* both signify the present Time; it should have been *Successive*.

Page 1016.

L. C. J. Then it had not agreed with your Words; which are, *That we had two wicked Kings together*.

Rosewell. If that be an *Anglicism*, this cannot be true Latin.

L. C. J. If it be a Blunder in Latin, it is one of your making, for you spoke it so in English; and



and the Indictment in Latin, must exactly pursue your English.

*Rosewell.* Then here is *Romanam Superstitionem* made to signify *Popery*: Now there may be Superstition in the Church of *Rome*, and yet that not be the Thing we call *Popery*.

*L. C. J.* Therefore, because *Romana Superstitio* may be too general an Expression, we have ascertain'd it with an *Anglice*.

*Rosewell.* Then, my Lord, it is said, *in eorum conspectu*, under their Noses. Now if the Latin in the Indictment, is exactly to pursue the English, it should have been, *sub Naribus illorum*.

*L. C. J.* Suffer Rebellion or Conventicles under your Noses, are these Things *sub Naribus* or *in Conspectu*?

*Rosewell.* These Words could not be spoken of the late King and this King; for the first died a zealous Protestant, and his present Majesty has often declared against it.

*L. C. J.* But it was the pretence of *Popery* and Arbitrary Power that brought the first to the Block, and the Cry of every Seditious Factioned Fellow, is against *Popery* now, as if it was just breaking in upon us, and the Government abetted it; and the Words are laid in the Indictment, as spoken *Falso & Malitiose*.

*Rosewell.* Then, my Lord, it is said, *si ipsi starent ad Fundamentalibus eorum*: How comes *Fundamentalibus* to signify *Principles*?

*L. C. J.* The Latin Bible expresseth them by *Fundamentalibus*, *If the Foundations be destroyed*, &c.

*Rosewell.* Then 'tis said *si ipsi*, which must refer to the two Wicked Kings that were spoken of just before.

*L. C. J.* No, that was spoken of your Congregation, if they would stand to their Principles.

*Rosewell.* It is said *ipse non timebat quin*, this is in the third Person, and singular Number.

*Sol. Gen.* The Jurors that find this Indictment, say that he said so, and that must be in the third Person.

Then Mr. *Rosewell* desired he might have Liberty, to declare what the Words of his Sermon really

Page 1009.

Page 1017.

The Prisoner avers he never spoke the Words in the manner the Witnesses testified.

Page 1020.  
He calls his own Witnesses to attest what he did say.

ally were; and in the most solemn Manner averr'd, that he did not speak the Words in the Order, or with the Intention the Witnesses had testified. And then call'd some Witnesses who took Notes at his Meeting, to shew what the Words were, and what Application he made of them.

Mr. *Thomas Hudson*, his first Witness, was call'd.

He deposed that the Prisoner being expounding the 2d Verse of the 20th Chapter of *Genesis*, concerning *Abraham's* denying his Wife *Sarah*; he said, Does *Abraham* fall again into Lying? I thought he had smarted enough in the 12th Chapter, for the same Lie told to *Pharaoh*; and doth he fall again, and not take Warning by it? From that you may take Notice, That the best of God's Children may fall again and again into the same Sin. And then he observ'd, what Mischief good *Jehosaphat* had like to have brought upon himself, by joining with two Wicked Kings, first with *Ahab*, and then with his Son *Ahaziah*. That he took Notice of what Mischief *Sampson* got, by taking a Wife among the *Philistines*; and yet, after he had felt the Smart of it, like good *Jehosaphat*, and good *Abraham*, he fell into the same Sin again, by going to *Timnah*, and taking *Dalilah*. That upon the 7th Verse, where God says to *Abimelech*, He shall pray for thee, for he is a Prophet, and thou shalt be Healed. The Prisoner spoke concerning the Worth and Value of the Prayers of God's Prophets; and said, *They were good to cure the King's Evil*. That he instanc'd in the Prophet that came to *Jeroboam*, and reprov'd him at the Altar at *Bethel*; and the King stretched forth his Arm, and bid lay hold on him, and the King's Hand was dried up. And the Prophet pray'd to the Lord, and the King's Arm was restored.

*Roswell*. Did you hear any thing concerning Rams Horns, broken Platters, &c.

*Hudson*. That was in the Sermon in the Afternoon; you only expounded in the Morning, as you us'd to do.

*Roswell*. She swears it was all in the Morning Discourse.

L. C. J.

*L. C. J.* What Time did this Exercise begin?  
And what Number of People were there?

*Hudson.* It began about Eight a Clock, and I believe there were Forty or Fifty there, but I did not see all the Rooms; I was up two pair of Stairs. At Noon there was a Resting while, and I think the Prisoner went down; but I could not see him where I was.

*L. C. J.* Did you hear any thing about Canting?

*Hudson.* Not that Day; but another, he was speaking of the Wicked Men of the World, and observing, that when they spoke of serious Religion, they call'd it Canting: But he said, Canting was nothing but a Whining Tone. I did not hear him say any thing concerning Organs, Surplices, or White Gowns; but something he had concerning Cathedrals, and their Canting Tone there.

*Rosewell.* Will your Lordship accept an Ingenuous Confession from me about this Matter?

*L. C. J.* No, no, That will neither Acquit or Convict you: And notwithstanding any Imprecations or Asseverations you make about your self, it must not weigh with the Court or the Jury. We must go according to Evidence.

*Att. Gen.* After he had spoken of the two Wicked Kings, how did he apply it?

*Hudson.* He said, If *Abraham* fell, and *Jehosaphat* fell, and *Sampson* fell, and *Peter* fell, What are We? *Let him that standeth take heed lest he fall.*

*Att. Gen.* Do you tell us all that Mr. *Rosewell* spoke concerning these Matters?

*Hudson.* No, not all, but the Substance of the Heads I remember.

*Rosewell.* How did you apprehend that about the *King's Evil* was meant?

*Hudson.* I do not believe he spoke it with respect to that Disease we call the *King's Evil*, because it was spoken with Reference to the Disease the King was under.

*Rosewell.* Do you remember how that about the *Rams Horns* came in?

*Hudson.* That was in the Afternoon, when he was Preaching on the 11th *Heb. xii.* He was shew-

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ing, how God could by very small Means, bring great Things to pass; and instanc'd in *Moses's* Rod, *Gideon's* broken Pitchers Routing an Army, Sounding Rams Horns, whereupon the Walls of *Jericho* fell down; *David* Slaying *Golian* with a Stone out of a Sling; our Saviour's opening the Eyes of one that was Born Blind, with Clay and Spittle.

*L. C. J.* Do you remember whether the Captain, at whose House you were the 14th of September, was at Home or at Sea? And whether he and his sick Son were pray'd for?

*Hudson.* The Captain was at Sea, and he pray'd for him and all his Family, as usual, but I don't remember any of them were Sick.

*Rosewell.* Did you hear the Kings of England mentioned, except when I pray'd for him; or was there a Word spoken of permitting Popery to come in under their Noses?

*Hudson.* He pray'd for the King, or else I did not hear a Word of any Kings that Day, except those in the Scriptures.

*L. C. J.* What did he pray for?

*Hudson.* He pray'd heartily that God would Bless the King, and enable him to Govern his People; and he us'd to say, *God forbid he should Sin against God, in neglecting to pray for the King.* And he pray'd God would remove all Evil Counsellors from him.

*L. C. J.* Ay, No question: And so I remember there was praying in this Hall for the doing his late Majesty Justice, and we know where it ended.

*George Hall* was call'd.

*Rosewell.* Were you present the 14th of September, when I expounded upon the 20th of *Genesis*?

*L. C. J.* What are you Friend?

*Hall.* I am a Mealman, my Lord: I was at that Meeting, and he mentioned *Jehosaphat's* joining with two Wicked Kings, *Ahab* and *Abaziah*.

*Rosewell.* Do you remember any thing spoken of the Kings of England?

*Hall.* Not a Word, but of the Kings of *Israel*.

*Rosewell.* What do you remember of *Jeroboam*?

He



*He said he remembred something about the Altar of Bethel, but telling his Story very imperfectly, the Prisoner agreed to set him aside.*

*Mr. James Atkinson* was call'd.

*L. C. J.* Is this the Miller at whose House one of the Meetings was?

*Mrs. Smith.* No, my Lord, *Hudson*, the former Witness, was the Miller.

*Atkinson* depos'd, That the Prisoner was expounding the 20th Chapter of *Genesis*, as it came in Course; and observing how *Abraham* bid *Sarah* say she was his Sister, he said, A Child of God might fall into the same Sin again and again, after he had been reprov'd and smarted for it. And he instanc'd in *Lot's* committing Incest twice; *Peter's* denying his Lord three Times; *Sampson's* taking two Wives among the *Philistines*; and *Jehoshaphat's* joining with two Wicked Kings, *Ahab* and *Ahaziah*.

*Rosewell.* What did you hear of the King of England?

*Atkinson.* Not a Word, unless in his Prayer, in which he always pray'd earnestly for the King. Indeed, upon the 7th Verse, where it is said, *He is a Prophet, and he shall pray for thee, and thou shalt be healed*: He said, The Prayers of God's Prophets were very prevalent, for the Healing and Helping others in time of Need; and instanc'd in the Prophet that pray'd for the restoring *Jeroboam's* Hand.

*L. C. J.* What you say may be true, and so may what they say too: But did you hear any Thing of the King's Evil, or that had reference to the King of England?

*Atkinson.* All that I remember I heard him say of the King's Evil, is, That a Godly Man, by his Prayers, may help to cure the King's Evil; and thereby the poorest Christian, may gratify the greatest King.

*Rosewell.* Do you remember what I said about Rams Horns?

*Atkinson.* Yes, In the Afternoon, you Preach'd upon *Heb.* 11. and 12. and rais'd this Doctrine, *That the great God can effect great Matters by very unlikely Means.* And you instanc'd in the Miracles wrought

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wrought by *Moses's* Rod; the Walls of *Jericho* falling down at the Sound of Rams Horns; the Rout of a great Army by *Gideon*, with broken Pots and Pitchers; and what a tremendous Champion *David* smote with a Sling and a Stone.

*Rosewell*. Did you hear me speak of standing to their Principles?

*Atkinson*. Not a Word, and I was there from beginning to end.

*L. C. J.* What Room were you in?

*Atkinson*. I was in the Room one pair of Stairs, and Mr. *Rosewell* stood in the Door?

*L. C. J.* You sat upon the Bed, the other Witnesses say, and had a Mourning Cloak on; and one of the Witnesses gave your Boys their Shoes they pull'd off, that they might not dirty the Bed.

*Atkinson*. Yes, but I can't tell who gave them their Shoes.

*L. C. J.* Did you hear any thing that Day, concerning Church-Musick, or Canting?

*Atkinson*. No, my Lord, not a Word.

*Sol. Gen.* Did you take Notes that Day?

*Atkinson*. No, Sir.

*Sol. Gen.* Do you remember any Observations he made upon any other Verses?

*Atkinson*. He only explain'd that that was difficult: What he observ'd on the 2d and 7th Verses, was the whole of the Exposition almost; he only Read the rest.

*Att. Gen.* Did any Body read their Notes to you since? Have not you and Mr. *Hudson* talk'd about it? He writ down the Sermon.

*Atkinson*. No Body has read their Notes to me; but we might talk together of what we remembered.

*William Smith* was call'd.

His Testimony was to the same Effect with the Prisoner's other Witnesses.

Mr. *George Hales* was call'd.

He deposed, that the Prisoner said, A Godly Man's Prayer was a sovereign Cure for the *King's Evil*; and that God was able to bring great Matters out of small; and that he gave the Instances the other Witnesses had mentioned.

*L. C. J.*

L. C. J. Did you hear any Notes read since?

Hales. Yes, I think they were *Thomas Hudson's*.

Sol. Gen. Pray is the Word *Tremendous* in *Hudson's* Notes? Page 1018.

Hales. I can't tell whether it be or no.

L. C. J. You heard him the *Sunday* before, and the *Sunday* after; pray what did he discourse on then? Page 1020.

Hales. That I cannot tell.

L. C. J. Tell us what else you remember of that Sermon the same Day.

Hales. I must consider a little, I am not so ready at it.

L. C. J. You have a very lucky Memory to serve a Turn: But I thought these Men, that have such stupendious Memories, as to remember the Chapter and Verse, and particular Words, might remember something before or after, at least, in the same Sermon.—— The whole Clan of them, can answer just as to such Things; but as to any Thing else, they are not prepared.

*John Wharton* was call'd.

His Testimony agreed exactly with the Prisoner's other Witnesses.

L. C. J. Can you tell us any Thing you heard before or since?

Wharton. Truly I heard him once upon the 19th of *Genesis*, but I have not any Notes.

L. C. J. Have you spoken with any Body, since the 14th of *September*, that did take Notes? Page 1019.

Wharton. I am not acquainted much with them, who did take Notes. Page 1027.

L. C. J. But answer my Question; Did you ever discourse the Matter, and with whom?

Wharton. I came thither by my self, I had not much Acquaintance with them.

L. C. J. Nay, do not prevaricate, Friend; I ask you in the presence of God, Did you ever speak with any Body since the 14th of *September*, about this Business?

Wharton. Mr. *Hudson* did read his Notes to me last *Thursday*.

L. C. J. It is a strange Thing Truth will not come out without this Wire-drawing.—— Did he mention

The Chief Justice observes the Difficulty of getting the Truth out of the Prisoner's Witnesses,

mention any thing to you of *Jeroboam*, *Jehosaphat*, and *Abimelech*?

*Wharton*. Yes he did; but I repeated to him more than I have done now. We met accidentally in the Street; I knew nothing of this till I saw the *Subpœna*.

*Att. Gen.* How came you to remember what was said that Day, and no Time else?

*Wharton*. Because he expounded some remarkable Passages, I had never heard before.

*Mr. Thomas Jollif* was call'd, as to the Prisoner's Life and Conversation:

The Prisoner  
calls Witnesses  
to his Character.

He deposed, that the Prisoner pray'd for the King, and that he never heard he was Guilty of any Disloyalty, either in his Words or Actions.

*Captain Cotton* also appear'd.

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He deposed, That four or five Years since, in the time of the Indulgence, he heard him pray for the King and Government, and bless God we liv'd under so peaceable a Prince, when all our Neighbours were in Blood and War.

*Just. Withins*. Ay, it may be then, he could speak kindly enough of the Government.

*Mr. Fipps* appear'd.

He depos'd, That the Prisoner was reputed a very honest Man when he liv'd in *Wiltshire*, and he had heard him pray zealously for the King; and since his coming to *London*, he had heard him speak very respectfully of his Majesty, and never otherwise.

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*Mr. Caleb Veering*, *Mr. John Hitchcock*, *Mr. Michael Hinman*, *Mr. Nicholas Wanley*, *Mr. John Strong*, *Mr. John Cutloe*, and *Mr. Charles Melfum*, gave him the same Character as to his Loyalty; and *Mr. Melfum* added, that about the Year 1664. the Prisoner went constantly to Church, and was at the beginning of the Prayers.

Page 1022.

Page 1030.

*Mr. Robert Medham*, and *Mr. Winnacott* appear'd for the Prisoner, and gave him the same Character as to his Loyalty; as did *Anne Broadhurst*, *Anne Manning*, and *Isabella Dickeson*, three of his Servants; and one of them depos'd, she had heard him praying zealously for the King in his Closet,

*Mr. Atkinson*



Mr. *Atkinson* was call'd again.

He depos'd, That the Prisoner kept the 30th of *January* as a Fast, and had this Text, *viz. Pray for Kings and all in Authority*; and asserted, That Kingly Government was most agreeable to the Word of God, and that the Constitution of the *English* Government was the best in the World, and urg'd it as a Duty incumbent upon all People, to pray for the King and Magistrates, *that they might live a peaceable and quiet Life under them, in all Godliness and Honesty*. And that he had heard him, both in publick and in private, inveigh against those who were concern'd in the Murder of the late King, and condemn it as a Diabolical Practice, and that he never heard an ill Word against the King or Government, drop from Mr. *Rosewell* in his Life.

Page 1023.  
Evidence that the Prisoner us'd to keep the 30th of *January* as a Fast.

*Rosewell*. Did you hear me say any thing of the Recorder being made a Judge, as Mrs. *Smith* has depos'd.

*Atkinson*. If my Lord will give me Leave to look upon my Note-Book, I can give an Account, for I writ down every Day the Place where we met.

*L. C. J.* Prithee see in thy Note-Book what was insisted on the 14th of *September*.

*Atkinson*. I have only a Note of the Day, of the Place, and of the Text.

*Rosewell*. Did you hear me speak of a Great Man (*Bloodworth*) in *Gracechurch-street*, That if it had not been for him the Fire had been quench'd.

*Atkinson*. I never heard that Expression.

Mr. *Smith* also appear'd, and testified he heard no such Thing.

*Rosewell*. Pray Mr. *Smith*, have you ever heard me Preach on the 30th of *January*.

Mr. *Smith*. Yes, I heard you Preach upon that Text *Pray for Kings and all in Authority*, and the Day was kept very solemnly for the bewailing the horrid Murder of our late King, and you express'd your Detestation of it, and preach'd much against it, and you have always Preach'd up Kingly Government.

Page 1024.  
And preach'd up Kingly Government as the best.

*Atkinson*.

*Atkinson.* Sir, You were asking me if there were a Meeting since *July*.

*Roswell.* Yes, Because she says there was one upon the 10th of *September*.

*L. C. J.* If you look upon your Notes, *Mr. Roswell*, you'll find 'twas the 10th of *August*.

*Atkinson.* I was at home sick then, it is written down.

*L. C. J.* Pray look upon your Book, How is it enter'd there, and when didst thou take that Note?

*Atkinson.* Somebody told me that Day or the next, and the Meetings were the 3d of *August*, at *Mr. Crookshank's*, the Text *11. Heb. 7.* The 10th, at the Meeting-House, my self at Home, and *Canticles 7. 13.*

*Roswell.* *Mr. How* can testify, that she should swear that he was at a Conventicle when he was not, I desire he will testify the Truth.

*How.* She sent Three Men.

*L. C. J.* How do you know that?

*How.* So they said.

*L. C. J.* That's no Evidence, if you know any thing of your own Knowledge, speak it.

*Roswell.* Then, my Lord, I desire *Mr. Recorder* will please to testify, whether there was not a Conventicle sworn before him against one *Mrs. Bathoe*.

He endeavours to discredit one of the King's Witnesses.

*Recorder.* There was a Conviction before me, which as the Witness told you, she had from *Mrs. Bathoe's* Confession.

*Roswell.* Do you know any thing, Sir, of a Composition that was made, or Money paid back.

*Recorder.* Do you think I make Compositions? *Mrs. Bathoe* told me, if she had said so she was mistaken, for there never was any such Conventicle as *Mrs. Smith* swore she had confes'd, on which I sent for *Mrs. Smith*, and finding she was mistaken, told *Mrs. Bathoe* she would have her Money again.

*Roswell.* Pray, Sir, when *Cartwright* appear'd on your Summons, did not you ask him what he had to say against the Witnesses now produc'd against me.

*Recorder.*

one *Dod's* Meeting-House, but she refus'd, because she was not there.

*L. C. J.* Why did not you go and complain when she had made such Proposals to you?

*Cartwright.* I did not then so well understand it, but she has ask'd me to do it several Times.

*L. C. J.* When Witnesses drop out of the Clouds, I never put any great Value upon them: All I can say is, it seems, she look'd upon thee as so very a Knave, as that thou wouldst have done such a Thing, and it may be she was not mistaken.

*Norron* being ask'd to testify to the same Purpose, knew nothing of it.

*John Hobson* call'd.

*Roswell.* My Lord, I bring this Witness to testify, that *Mrs. Smith* swore there was a Conventicle at *Mr. Hale's*, the 13th of *July*, and there was not.

*Hobson.* There was none, to the best of my Knowledge.

*Just. Withins.* We must not Convict People of Perjury upon such Evidence; Indict her of Perjury, if you have a Mind to it.

*L. C. J.* Were you at every Meeting always that he preach'd.

*Hobson.* No, my Lord.

*L. C. J.* Then there might be many Meetings that you don't know of.

*Hobson.* I live next Door to this *Mr. Hale's*.

*L. C. J.* There may be a Meeting next Door to my House Twenty Times over, and I not know it.

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*Mr. Crook* and *Sarah Whibby* call'd.

*Crook.* I never heard of any Meeting at *Mr. Hale's*; I live under his Roof.

*Whibby* testified, She was certain there was none, by a good Token; that Day her Chimney was on Fire.

*L. C. J.* Where was the Meeting that Day your Chimney was on Fire?

*Whibby.* At *Mr. Hudson's*, by Relation; but I was not at it.

*L. C. J.* We know well enough you Snivelling Saints can lye.

*Ann*



*Recorder.* I did so, for they told me they went in Danger of their Lives, had Stones thrown at them, and were hard beset with Applications of Money to take them off from Prosecuting, and complain'd that *Cartwright* had been dealing with them, on which I sent for him, and he satisfied me he had nought to say against them.

*L. C. J.* These Questions, *Mr. Rosewell*, perhaps may be better let alone.

*Rosewell.* Pray, Sir, on what Account did you send for *Richard Gibbs*, of *Rotherhith*?

*Recorder.* Because I heard the Constables of your Side (of which he was one) durst not execute their Warrants for Fear of the Rout of the People.

*L. C. J.* I tell you these Questions were better alone.

*Rosewell.* *Mr. How*, Did not *Mrs. Smith* offer to Swear before *Sir George Treby*, that you were at a Conventicle when you were not?

*How.* I was by when she offer'd to inform against one *How*, but said I was not the Man.

*John Townsend* call'd.

*Rosewell.* Pray, What do you know concerning *Mrs. Smith's* Swearing that *Mr. How* was at a Conventicle?

*Townsend.* I went with him when he understood Oath was to be made against him, and he ask'd her if she knew the Man; several were there, and she knew neither of us.

*L. C. J.* She seems careful that she did not Swear against the wrong Person.

*Sir Geo. Treby* call'd, but did not appear; then

*Tho. Harvey* was call'd.

*Harvey.* *Mrs. Smith* telling one *James*, of *Southmark*, she could swear against him and others, he desir'd me to speak with her, which I did, and she said Ten or Twenty Pounds should take her off from Swearing against them.

*Mr. John Cartwright* and *Mr. John Norton* call'd.

*Cartwright.* *Mrs. Smith* has ask'd me to Convi&ct with her when I have not been at a Meeting, and has offer'd to Convi&ct with me when she hath not been there, and has also ask'd my Wife to Convi&ct one

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*Ann Collins* was call'd,

Who depos'd, There was none there that Day.

*Sarah Bathoe* appear'd.

*Rosewell.* I call *Mrs. Bathoe* to prove *Mrs. Smith* was mistaken, when she swore she had a Conventicle at her House, on which she was Convi&cted.

*L. C. J.* She says, she heard that *Mrs. Bathoe* confes'd there was one.

*Bathoe.* She has Convi&cted me.

*L. C. J.* Ay, But 'twas upon your own Confession.

*Bathoe.* I never confes'd any such Thing; for I had none at that Time. Page 1028.

*L. C. J.* Had you ever any Conventicle at your House?

*Bathoe.* I desire to be excus'd from answering that Question.

*L. C. J.* Then I'll not believe her; if she talk'd as long as you Preach, it would be a fine Thing if an Old Woman's Story should prevail here against positive Testimony.

*Susan Bathoe* came in, and depos'd, There was no such Conventicle at that Time.

*L. C. J.* It may be a Mistake only to the Day, since she will not answer whether she ever had a Conventicle; and, for ought I know, *Hale* has had Conventicles, and what's all this to the Purpose of which you are accus'd?

*John Ferne* was call'd.

He depos'd, That *Mrs. Bathoe* told him, she was to have her Money again, upon her Appeal, and that he went with her to the *Recorder's* about it, and they met *Mrs. Smith* there, and the *Recorder* said, It was out of his Hands then, but he would speak with *Sir William Smith*, the Chairman of the Sessions about it.

*L. C. J.* I can make nothing of all this, What a Business is here?

*Ferne.* She seems to be a rash Woman, ready to swear any Thing.

*L. C. J.* Oh! Dear Sir, and you seem to be a grave, prudential sort of a Man.

*Rosewell.* If she did not swear to this Meeting of Mr. *Hale's*, why was he Convicted?

*L. C. J.* I know nothing of the Conviction, 'tis the first Time I have heard of it; make appear what she swore, and that what she swore was false, and then you say something.

*Rosewell.* We have desir'd Liberty of the Recorder to search the Records, but could not have it.

*L. C. J.* Your Wife told me the Recorder refus'd to let her have Copies of several Records that were necessary for your Defence; but on Inquiry, I understood they were Copies of Convictions, and were return'd to the Sessions of the Peace; on which I told her, If the Clerks of the Peace deny'd to give you Copies at your Charge, I would lay them by the Heels: But afterwards, I apprehended you had a Mind to know on whose Testimony the Convictions were made; now, that's no Part of the Conviction, and ought not to be granted, for 'tis to open a Way to Tamper with the King's Witnesses. After this Mr. *Wallop* mov'd the Court of *King's-Bench* about the Matter, we gave him the same Answer; and if Mr. *Attorney* had desir'd a List of your Witnesses, we should have denied his Motion, for we must prevent Tampering with the Witnesses, on all Sides.

*Rosewell.* It is that which must enable me to make my Defence, if we could have their Names, we could prove them Perjur'd.

*L. C. J.* It cannot be by Law, you have the same benefit with the rest of the King's Subjects, if any one be convicted or acquitted of Treason, the Testimony of the Evidence is never enter'd on Record, but the Notoriety of the Fact, or Confession of the Party, are each sufficient to make a Conviction by Record.

Mr. *Charles Walker* call'd.

*Rosewell.* Pray what do you know of the Conviction of Mrs. *Hale* by the Testimony of *Elizabeth Smith*, for a Conventicle at her House.

Mr. *Walker.* You had a Copy of it from the Clerk of the Peace, I made it out and 'tis a true Copy.

Page 1029.  
The Evidence  
is never made  
part of the  
Record.

A Prisoner  
may not have  
a List of the  
Witnesses a-  
gainst him.

*L. C. J.*



*L. C. J.* Then make what use you please of it, will you have it read.

*Rosewell* I desire a passage in it may be Read.

Then the Passage he desir'd was Read.

*L. C. J.* What can you infer from this, it says by two credible Witnesses, and the *Notoriety* of the Fact, She was convicted.

*Richard Drew* appear'd.

*Drew* Depos'd, That *Elizabeth Smith* took ten Shillings from a Friend of his to forbear Prosecuting him.

*James Howard* call'd.

*Howard* Depos'd that going accidentally into an Alehouse he saw *Mrs. Hilton* take a bribe of Eleven or Twelve Shillings, of a Man who had been at a Meeting, but he never saw either of them before.

*Ann Higgenfson* appear'd and said, she had heard some ill Things of her, but could say nothing of her own Knowledge.

*Ann Carter* call'd but did not appear.

*Sir John Talbot* appear'd, and depos'd that *Mrs. Shaftoe*, alias *Hilton*, was a Servant in his Family about Ten Years, that she had no very good Character amongst the Servants, and said that she was guilty of telling Lies and Stories in the Family, and that she had been concern'd in cheating Gentlemen of Money, by pretending she had an Interest in one *Mrs. Jones* who was a Fortune, and that she would put her into their Hands, as he had heard.

Page 1030.

*Mrs. Ann Dillingham* call'd.

*Mrs. Dillingham* depos'd that *Mrs. Shaftoe*, alias *Hilton* lodging in her House, had ask'd her to swear of Meetings that she knew nothing of, and offer'd if she would swear whether right or wrong, she should have a share of the Money, and that she kept Company with *George Hilton*, and was not married to him, for which this Deponent's Husband turn'd her out of Doors, and said further, that she was a naughty Filthy Woman, should she call her Whore, she believ'd 'twas true.

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*L. C. J.* Have you any more Witnesses of either side.

The Evidence  
clos'd.

*Att. Gen.* My Lord, We have some to support the Credit of these we have produc'd, but don't think there's any need, it not being any way diminish'd by the Prisoner at the Bar.

*Roswell* pro-  
ceeds in his  
Defence.

*L. C. J.* Mr. *Roswell* let's hear what you have to say further for your self; for all the Witnesses have been heard on one side and t'other.

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Then Mr. *Roswell* said that what he should now speak was as much in respect to the precious Souls of those who were concern'd in the Prosecution or trying of him, as of his own safety, and that, tho' Strangers, he would lay down his Life to be instrumental in saving any one of their Souls; then he declar'd his incapacity to make a regular Defence before such learn'd Gentlemen of the Long Robe, and thank'd his Lordship and the Court for the Indulgence shown to his Infirmities; Then he observ'd that the Witnesses varied in their Evidence, for Mrs. *Smith* swears the Text was the 21st of *Genesis*, and Mrs. *Hilton* swears to the 20th, and therefore they could not be deem'd two Legal Witnesses, or either of them deserve credit; his next Observation was, that they testified the Words charg'd in the Indictment, were deliver'd altogether in the Morning Exercise, when he had prov'd the contrary, and again left it to the Jury if they were two credible Witnesses; That they vary'd likewise in this, that one depos'd they met at Captain *Daniel Weldy's*, and the other at Mr. *Daniel's*, and if they were out in one thing they might be so in another; (*Here Mrs Smith spoke but was forbid to interrupt his Defence.*) He goes on to observe their great Wickedness, in applying what was Innocently spoken and meant, to the late King and his present Majesty, whom as he had prov'd, he always pray'd for: He added that they had not only Sworn him a Knave, but a Fool, and a Madman, to speak such absur'd incoherent, sollecistical and noncensical Things, and he had brought Persons to Testifie no such Things were said, and that he was always for Monarchy, and against Anarchy, and continually observ'd the 30th of *January*, and the 29th of *May*, and inveigh'd against those who were Rebels

Page 1033.

bels against his present Majesty, or had been concern'd in that barbarous Act against his Royal Father, which he utterly abhor'd; and observ'd further, that several Gentlemen of the Church of *England*, had testified concerning his Conversation, who had known him eight, ten or twelve Years, that he hop'd his Lordship and the Jury took Notice that the Witnesses would swear and forswear any Thing, and that one of them had made Compositions, and was a Woman of lew'd Conversation, He observ'd likewise that they must have incredible Memorys, that could so exactly agree in every Circumstance and in each particular Word, which he believ'd the Jury would not undertake to repeat upon their Notes; and said, that he lay'd the great stress of his Defence, not on the Incredibility and Improbability, but the Impossibility of the Truth of the Evidence they had given; That he confess'd if that were a Crime, that 'twas his practise to expound the Scriptures to the People, for the People, he said, Perish'd for lack of Knowledge, and it was by the knowledge of our Lord *JESUS CHRIST*, that they must come to Life and Salvation.

*L. C. J.* Mr. Attorney, Will you or any of the King's Council, say any thing in this matter. Page 1034.

*Att. Gen.* No my Lord, we leave it entirely to your Lordship.

The Lord Chief Justice, In summing up the Evidence, said, that tho' a Man must have an Obdurate heat, not to compassionate his Fellow Creature, in such Circumstances, yet the Prisoner's Denyals, with the Imprecations he had made, and the Affirmations he had offer'd of what he had formerly done, and his appealing to God about his Innocency, was not to weigh with the Jury, for their Business according to the Oath they had taken, was to know if they had Evidence given, to satisfy them he was guilty according to that Evidence. He observ'd likewise, (tho' he said he did not speak it to affect this Case) that the Law does declare, that 'twas from these Semanaries of Sedition, and Factious Conventicles, and the Clubs and Cabals of discontented and irregular

The Chief Justice sums up and makes his Observations on the Evidence.

Page 1035.

People; disaffected to the Laws both of Church and State, that the great Mischief and Confusion that was brought upon us, and which at length brought us into the Distractions of the late Times proceeded, and that he must say (whatever the Prisoner thought) that blessed Martyr King *Charles* the First, was by such means brought to that horrid, cursed, murderous Death and End, under Pretence of Religion, and that perhaps there were as many Rebels rais'd against the late King, by the beating of the Cushion in the Pulpit, as by the beating of the Drum in the Street. He observ'd also, that they pick'd out and chose occasional Texts of binding Kings in Chains, and their Nobles in Fetters of Iron, and rais'd such Doctrines from Texts of Scripture as were intended to quite other Purposes, to make People kill and slay *God's Anointed*, under pretence of saving and protecting the *Anointed of God*. He observ'd that the Prisoner said he undertook to expound, and teach his People the Knowledge of God, that 'twas a very good Lesson to be Learnt and Taught, but (without any Reflection on the Gentleman at the Bar,) he thought we had Churchmen of as great Learning, Piety and Virtue as he could pretend to, and that whoever Preaches at a Conventicle, cannot Preach Obedience to the Civil Magistrate, because in that very Preaching, they are acting Disobedience against his Laws; Then he shew'd that the Thing now before them was a Question of a different Nature, that they were not to try whether he preach'd at a Conventicle, or whether in so doing 'twas against Law, but whether he did speak Words of the same Substance, to the same Effect and Intent that are compris'd in the Indictment, therefore they were to try and consider whether the three Witnesses produc'd against him, did swear true, or were guilty of willful Perjury; Then he repeated the Substance of the Evidence, and concluded that according to his understanding, and Memory he had given them the best account he could, both of the Evidence for and against the Prisoner.

Page 1036.

Page 1043.

*Roswell.* May a Loyal Subject have leave to speak?

L. C. J.



L. C. J. No, Mr. *Rosewell*, after the Jury are charg'd by the Court, you are not to say any Thing. Swear an Officer to keep the Jury. (*Which was done.*)

The Prisoner may not reply after the Evidence summ'd up.

(Then the Jury withdrew to Consider of their Verdict, and after some time, return'd and brought the Prisoner in Guilty?)

The Prisoner is convicted.

" *Rosewell* desir'd the Jury might be ask'd *Seperatim*, whether they all agreed to be of the same Opinion, but was answer'd, 'twas never done, if there were any difference, the Court would hear it from amongst themselves, and that they would not indulge any Innovations.

Page 1044. Desires the Jurors may give their Verdict severally but is denied.

Then the Court broke up.

*Die Luna 24. Nov. 1684. B. R. Dom. Rex Versus Rosewell.*

Mr. *Serj. Jenner*. My Lord, We desire Judgment against the Prisoner at the Bar, upon the Conviction that was here the other day, for High-Treason.

The King's Council move for Judgment on the Conviction.

L. C. J. Then call him to Judgment.

" And after being ask'd by the *Clerk of the Crown*, what he had to say why Judgment should not be given against him, he was made kneel and rise again.

Mr. *Rosewell* having renew'd his Protestations of Innocency, said he conceiv'd, that (if he were guilty of the Words) as they were laid in the Indictment, altho' they were foolish ugly Words, and a great Misdemeanour, yet they were not Treason, and begg'd the Indictment might be read once more in Latin, ——— and the whole Indictment was read again in Latin, after which Mr. *Rosewell* observ'd that there was not any Crime sufficiently set forth to give Judgment upon: For that was not sufficient in an Indictment of Treason to say in general, that a Man did intend to depose the King, or raise a Rebellion, without some Overt-Act, positively asserted to be done by that Person; The special Matters that set forth the particular Acts of Treason, are those that make the real Charge on the which the Court and Jury are to proceed, and if that special Matter be insufficient, the Party cannot be convicted of High-Treason, and that

Page 1045.

He moves  
arrest of  
Judgment and  
that Council  
may be assign'd  
him as to mat-  
ter of Law.

'tis insufficient, does appear First by the *Inuendo's* being Naught, and Void, and that without those *Inuendo's*, neither Treason nor any thing else could be made of the Words. Secondly, He insisted on the repugnancy and insensibility of the Words laid in the Indictment, being such Latin as he believ'd his Lordship never saw before, and desir'd Judgment might be arrested, and Council assign'd him.

L. C. J. What say you to it Brother Jenner and the King's Council.

Mr. Serj. Jenner. I cannot see that he has alledg'd any Objection which here requires an Answer from any of us that are of Council for the King.

L. C. J. Yes, Brother, methinks he does.

Att. Gen. This Indictment is upon the 13th of this King, wherein Words are made Treason if they intend hurt or Imprisonment to the King's Person. As for the *Inuendo's*, he does not assign wherein they are insufficient; now the Indictment says, that he did Compass and Immagin the Death and Destruction of the King, and to affect that Compassing and Imagination, he did speak such and such Words, which by the Statute of 13 Car II. are made Treason if they tend to the Imprisonment or Harm of the King's Person, as these Words do: All this is laid in the Indictment, and the Jury find them spoken maliciously, and with such an intention as we have laid them, and therefore we think that is sufficient.

L. C. J. The Prisoner's meaning was not, that Words were not sufficient to create a Treason; but that the Words, as laid in this Indictment, are not sufficient; and the Question is, whether the Words there laid be so positively affirm'd to be spoken by the Prisoner, and to relate to the Governemnt as they ought to be in an Indictment of High Treason.

Page 1045.  
Objects to the  
Indictment  
that the words  
are not possi-  
bly averr'd  
to be spoken.

Att. Gen. That the Indictment must make out, and the Jury have found him Guilty according to the Indictment.

L. C. J. But that is his Objection, that they are not positively affirm'd, but only alledg'd under

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der an *Inuendo*, and that that is not possible enough to make the Indictment good, so that the Objection does seem to carry very much Weight in it,

Page 1046.

*Sol. Gen.* My Lord, The First Part of the Indictment shews, that the Words must be spoken of the Person of the King, and of the late King; for it says he did conspire the Death and Destruction of the King, and to depose him from his Government, and to manifest that traiterous wicked Intention of his; *Ea Intentione*, he did speak these Words of the Government, *We have had two wicked Kings together*, meaning this King and the late King.

*L. C. J.* If you had said so, that he had spoke these Words of the King, you had answer'd the Objection.

*Sol. Gen.* We do so my Lord, for we say *Et ad easdem nefandas proditiones, &c. perimplendas*; He spoke such and such Words, *We have had two wicked Kings together*, *Inuendo* this King and the late King.

*L. C. J.* You have *Inuendo*'d it too much I doubt, for all the Facts are laid under an *Inuendo*, without a positive Averment.

*Inuendo's* insufficient without a positive averment.

*Att. Gen.* All this my Lord is only in delay:

*L. C. J.* Mr. Attorney, *De vita Hominis nulla est Cunctatio longa*; I think we ought to assign him Council, and the rest of my Brothers are of that Opinion too. Well who would you have to be your Council?

Council assign'd the Prisoner to argue matter of Law.

*Rosewell.* Mr. Wallop, Mr. Pollexfen, and Mr. Thomas Bamfield.

Who were assign'd him, and he order'd to be brought by Rule on *Thursday* after, that the Court might have Time to consider.

Page 1047.

*Die Mercurii 26 Nov. 1684.*

Mr. Pollexfen mov'd for himself, and the others assign'd Council for the Prisoner, that the Court would order them a Copy of the Indictment, that he acknowledg'd 'twas not usual to have Copies granted in Capital Cases, (tho' he knew of no express Law against it,) but to enable them to do what's fitting for their Client, Copies had been granted, as in *Fitzharris's* Case, in order to the Plea that he was to put in.

They move for a Copy of the Indictment.

*L. C. J.*

L. C. J. I make no doubt of the Power of the Court to order a Copy, if they see Cause, but 'tis not to be granted because it's ask'd. For my Lord *Ruffel* had no Copy, tho' he insisted very much upon it. And 'twas granted in the Case of *Fitzharris*, that he might particularly apply his Plea to the Indictment it self.

Mr. *Pollexfen* Said, that he desir'd a Copy only of so much thereof as might be enough for them to know the Foundation on which they were to go, that they might understand how it is really laid in the Indictment, that they might apply their Arguments to the Case, and that he believ'd was never denied.

L. C. J. Declar'd that he could not say there was any express Law against it, but it has been always the Practise to deny a Copy, therefore they must shew Precedents where it was done, that he confess'd 'twas hard, and so are many other Things in the Law, but he was very tender of making Precedents, and that it being in Case of Life, he would indulge them as far forth as he could, but as it had not been practised, he did not see how he could do it. *And a Copy was denied.*

*Die Jovis 27. Nov. 1684. B. R.*

Mr. *Roswell* being brought to the Bar, the Court demanded of his Council what they had to say.

Mr. *Wallop*, Council for the Prisoner, in his Argument Insisted, that the Words laid in the Indictment, discharg'd of the *Inuendo's*, were loose, extravagant, insensible Words, rather than Treason. And held that if it was only the *Inuendo's*, that made them Treasonable, and those *Inuendo's* were not warranted by Law, they could not effect the Prisoner; And that it is a Rule in Law, that no *Inuendo* could Warantably be Inserted in an Indictment, Information or Declaration, upon an Action of the Case for Words, unless the Defendant be first averr'd, (and that directly) to have mention'd a Person in certain himself, to whom those Words may be referr'd; and in this Case, how could the Hearer understand who the

Preacher

A Copy  
deny'd.

Page 1048.

Mr. *Wallop's*  
argument for  
the Prisoner.

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Preacher meant, and so be Influenc'd to Rebellion, unless the Preacher himself had nam'd the King to whom the Words he spoke should be Referr'd? That as to the First Words laid in the Indictment, (*viz.*) *Quod Populus, &c. The People* (meaning the Subjects of our Lord the King) *keep a flocking to the King to cure the Kings Evil, which he cannot do, &c.* Here *Populus* might intend any People: It might intend the *French People* flocking to the *French King*, (For he pretended to heal the People in the same manner.) As to the next Words, *Nos habuimus nunc duos iniquos Reges insimul; We* (meaning the Subjects of the King) *have had two wicked Kings* (meaning King *Charles* the First, and this King) *together*; That there was no mention of any Kings before in the Discourse, to which according to the Office of an *Inuendo*, these Words are to be apply'd, according to the 4 *Rep. fo. 17 B. int. James &, Rutlegh* being an Action of the Case for Words; where two things were resolv'd, First that the Person scandaliz'd must be ascertain'd: And Secondly, That the Words spoken must be apparent Slander.——

And he held, That an *Inuendo* was not sufficient to give an Original Certainty, where a Certainty is not fix'd before. The Defendant himself must set up such a Light, as will carry the Intention to the End of the Discourse.

—— And further, That the Words *Habuimus nunc* were inconsistent, *Habuimus* referring to the Time past, and *nunc* to the Time present, and that if *Habuimus* were to take Place, it might refer to any Two Kings before the Conquest.——

Then he proceeded to the Words which seem'd to be most rely'd on, *viz. If they would stand to their Principles, he did not question but they should be able Inimicos suos vincere, (Inuendo the King and the Government.)* Now there was no Mention of any *Enemies* before, no Averment that the King was Enemy to any body, or any body to him, and therefore the *Inuendo* was to be rejected: It could not put such a Violence and Force upon Words, as to make them Treason, when in themselves they have no such Meaning; and that by the Law of *England*, in all dubious, uncertain and general Cases,

Page 105n.

An *Inuendo* can't give an Original certainty where a certainty is not fix'd before.

Shews the Inconsistency of one of the expressions.

Page 105r.

Cases, the most benign and candid Interpretation is to be taken ; so that if there were a Doubt, as to the Meaning of the Words, the most favourable Construction ought to be made.

Mr. Pollexfen's  
Argument.  
Words may  
be an Overt-  
Act of Treason.

Mr. Pollexfen being also of Council for the Prisoner, in his Argument, admitted That some sort of Words might be an Overt-Act of Treason, but that the Statute of 13 Car. II. on which the Prisoner was Indicted, had distinguish'd between Words of Treason and Misdemeanours ; and was about to shew, that these for which the Prisoner was Indicted, were but a Misdemeanour by that Statute.

Here Mr. Attorney interrupted him, and said, He did not understand it was his Lordship's Pleasure they should argue whether the Words were Treason, being found to be spoken with such an Intention, but whether the *Inuendo's* had been sufficiently laid to maintain the Indictment in Point of Form.

Page 1052.

Mr. Pollexfen. My Lord, What I would observe is, That the Treasonable Printing, Writing, or Speaking, mentioned in the first Clause of that Statute, must be of such Words, as shall intend the Death, Bodily Hurt, Restraint, or Imprisonment of the King's Person, or Levying War. And, That if the Words laid in the Indictment, are in themselves so uncertain, or such as do not tend or relate to the present King, or the present Government, to stir up Sedition or Rebellion against them ; then they will not be Treason, because they do not so relate. That the Words laid in the Indictment seem'd to run thus, *We have had now two wicked Kings together, who have suffered Popery to come in under their Noses ; we cannot compare them to any but wicked Jeroboam : And if [they] would stand to their Principles, then he did not doubt but [they] should overcome their Enemies, as in former Times, &c.* And, if according to Grammar, *Ipsi* (they,) being a Relative, must refer to that which went last before, there is nothing in the Sentence that went before, but *We*, (that is, he and the People that heard him) and the two Kings ; and the two Kings being last spoke of, it must

Page 1053.

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must be understood of the Kings: For it would be pretty hard to apply the *Nos habuimus nunc duos iniquos Reges*, to the *ipsi qui starent ad Fundamentalia*. But in all probability he spoke it thus, *And if we do but stand to our Principles, I do not doubt but we shall overcome our Enemies as formerly, &c.* But *ipsi* is a variation of the Person, and according to Grammatical Construction, it is evident how it ought to be expounded. This last seems to be the natural reading of the Words; but the Indictment has not pursued them, but instead of that has made Nonsense; for I don't see how *ipsi* can be me and my Auditors.

But passing by this, How will they make the Word *Inimicos* to mean the King and his Subjects? For it is not surely an *Inuendo* that can make my Words have any other Sense than I that spoke them intended, the bare Setting down the Words with *Inuendo's*, are not sufficient to maintain an Action or an Indictment; for there are but two Ways to apply Words that are uncertain, the one is, By laying a *Colloquium* precedent of such Matter as leads to the Sense of the Words, (and whenever that is done, the *Colloquium* must be prov'd in the Evidence;) the other Way is, Where Words are laid in a Declaration, with an Averment that they were spoken of such a Person, then the Words, with an *Inuendo* after that Averment, shew sufficiently what is meant by them: As where one says, your Brother, your Master, your Servant, or your Son, is a Thief, here the Words themselves do not express the Man of whom the Scandal is rais'd, but they give such a Description of him, that the Hearers may know who is meant; and then, if in the Declaration it is averr'd that the Plaintiff was his Brother, his Master, his Servant, or his Son, and these Words were spoken of him, and thereby it comes to be made apparent to the Court who is meant, it is right, but then the Averment must be prov'd, or the Action cannot be maintain'd: These are the only Ways that are allow'd to maintain any such Action; and there the *Inuendo* comes very properly to assist the Averment or *Colloquium*. But in this Case here's nothing but a bare

An *Inuendo* without a preceding *Colloquium* or Averment, cannot maintain an Action or an Indictment.  
Page 1054.

The *Colloquium* and Averment in an Action for Words, must be proved, to maintain the Action.

Mr. Attorney's  
Reply.

Page 1055.  
But where  
Words are  
plain and ex-  
press, there  
needs no A-  
verment.

Page 1056.

Page 1057.

bare *Inuendo* that such and such were meant, without either a *Colloquium*, that there was a Discourse concerning such and such Persons, or an Averment that the Words were spoken of the Persons.

Mr. Attorney reply'd, That where-ever Words, by strong and pregnant Intendment, do carry Slander, and of such a particular Person, there the Books are express, that there needs no Averment that they were spoken of such a Person, and for this he cited the Case of *Fleetwood* and *Curle*, Hob. 297.

That this was not only so in Actions of the Case for Slander, but also in Indictments and Informations; and here every one knew there was but one King and one Government: And when Words are laid, to be spoken to excite Commotions or Rebellions, they are but external Declarations of the Mind, his inward Thoughts were the Treason: Indeed the laying that alone, That he did so and so compass and imagin, without some outward Declaration, would not be good in an Indictment, any more than the outward Declaration, without the inward Intention, would be sufficient; but in this Indictment it was laid, that he did imagin to raise Rebellion, and War within the Kingdom, to stir up the People against the King, and to depose the King, and bring him to Death, and then goes on and says, to the end he might effect this Treason he spoke such and such Words, (which by the late Statute amount to Treason;) Now if these words did not in their own Nature import a Tendency to invite and stir up the People to Rebellion and War against the King, it would be naught with *Inuendo's*, and so it would if there were Twenty Averments. He added, That this Indictment was according to former Precedents, and cited 3 *Henry VIII. Ro. 17.* the Indictment against the Lord *Grey*; the 2 *Jac. Lord Cobham's Case*; *Pas. 17 Jac. Ro. 40. Williams's Case*, and *Fitzharris's Case*, where the Duke of *York* was described in the Libel by the Letters D. of Y. and sometimes only Y. and the King by the Letters Ch. and the *Inuendo* is (meaning our Sovereign Lord the King,) and there is nothing averr'd; and that in Colonel *Sidney's Case*, there was no Averment, but the Words



Words of the Libel are brought in also with an *Inuendo*; from whence he inferr'd, that the charging Words to be spoken, to stir up Sedition and Rebellion within the Kingdom, without the help of any Averment whatsoever, was sufficient.

That to say *Enemies* was a very general Word, and therefore a bare *Inuendo* could not make it mean one more than another, was odd; for he said it to a Congregation, being unlawfully assembled at a Conventicle: And when he said, *That [they] should overcome their Enemies*, the Government must be intended.—— Besides, it was plain who he meant, by what he said before: That the King was a wicked Man, and represented him as an *Enemy* to God and Man, by introducing Popery into the Kingdom; and it was well known, that the constant Cry in those Conventicles was, that we should be over-run with Popery, which were considerable Circumstances in this Case: That it was the same thing as if the Words had been spoken at the Head of an Army, they being spoke to People assembled contrary to the Laws of the Land, and in Defiance of the Government. Nor did he see how it was possible the Words could be better laid, being sworn exactly as they were laid; and, especially, being found to be all spoken to raise Sedition and Rebellion.

Page 1058.

Mr. *Solicitor* also insisted that the Form of the Indictment was good. He said, had the Words been *Procure your selves Arms, and make your selves ready by such a Day, and go to Whitehall, and kill the King*. No one would have affirm'd it was necessary they should say in the Indictment, *Dixit de Populo, vel de Rege*, so and so, because the Words plainly import their own Meaning, and so they do in this Case; and therefore to say, *dixit de Rege, dixit de Populo*, would be impertinent. That indeed it was necessary in Actions of the Case for Slander, to aver, *dixit de quarente*, for he must ascertain the Person of whom the Words are spoken, to be the very Plaintiff, because there may be several of the same Name; but where Words are pregnant, and full of themselves, there needs no Averment.

Page 1059.

My

The Chief Justice inclines to allow the Exceptions.

Page 1060.

My Lord Chief Justice said, that the Precedents Mr. Attorney had cited, had very little Weight with him : And though he made no doubt, that if one should bid Men prepare Arms, and go to *Whitehall*, and kill the King (according to the Case Mr. Solicitor had put) those Words would be an Overt-Act of High-Treason. For there the Words import in themselves who is meant, and are therefore good without any Averment. But had he bid them Rise, and go to *Whitehall*, and they should overcome their *Enemies*; there would be no necessity of intending the King was their Enemy, unless it had been plainly declared by the Party himself who he meant. And there was no doubt, if they had averr'd that those Words were spoken of the King and the People of *England*, it would have made it more certain. And if they had laid the Words thus, *If we will stand to our Principles, we shall destroy them*, the Case would have been ten times stronger. That he thought the Words, *We have had two Wicked Kings together, who have suffered Popery to come in under their Noses*, related plainly enough to the late King and the present. But that when they came to speak of *Enemies*, inuendo the King and his Subjects; having talk'd of no Body before that they were said to have an Enmity against; this, he doubted, was to stretch it a little too far. — Then as to the difference of Persons, he observ'd, they began in the first Person Plural. *We have had two Wicked Kings together; Nos habuimus nunc duos iniquos Reges insimul*: And afterwards say, *If they, Ipsi, will stand to their Principles, he did not doubt but they should overcome their Enemies*. If they had laid them (as any one must believe they were spoken) *If you or we will stand to our Principles, we shall overcome them*; and a Jury had found that these Words were spoken with such an Intention as is laid in the Indictment, it would have been Treason. But when they come and say, *Ipsi, They*, in the third Person, and there are no third Persons spoken of but the two Kings, who are also the last Antecedent, who could this relate to? Had they put *Nos* instead of *Ipsi*, it had been better understood, and better Grammar; for

The Chief Justice shows the repugnancy of the Expression.

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for when one speaks in the third Person, he excludes both himself and those he speaks to, and an *Inuendo* cannot help it.

*Sol. Gen.* If we had laid it otherwise, we should not have laid it as the Truth is, for the Word spoken was *They*.

*L. C. J.* No doubt he said, *If you will stand to your Principles*, it is Nonsense else.

*Sol. Gen.* I take that to be well enough, for there are three Sentences: The first is, *That the People make a flocking to the King, &c.* *Quod populus, &c.* The next is, *Quod nos habuimus, &c.* And the third is, *Quod si ipsi, &c.* Now *quod* governs the particular Sentence by it self, and it is good in Grammar, and in Sense too.

*Mr. Solicitor* endeavours to make it good Grammar. Page 1061.

*L. C. J.* You lay it in the Indictment to be an intire Speech, and then the Relative must go to the last Antecedent.

*Just. Withins.* If you make it several Speeches, it is ten times worse; for then the latter part is so uncertain, without an averment of whom the Words were spoken, that it can never be made good.

*Sol. Gen.* It was an intire Speech, but consisted of several Sentences, which in common Understanding, must have relation to one another.

*Just. Walcott.* I think that the Averment that these Words were spoken of the King, is a point of Fact that ought to be aver'd and prov'd. Page 1062.

*L. C. J.* Our Books require greater Certainty in Indictments, than in Actions on the Case; and in Causes of this nature, we are bound to be of Council for the Prisoner (which we are not in Causes not Capital.) And we have not one Act of Parliament to help the Defect of Form in Indictments, as we have in Civil Actions; which shews that our Ancestors would not help Uncertainties or Insufficiencies in Form, where the Life of a Man was concern'd. We will consider of it: Take back the Prisoner, and you shall have a Rule to bring him when the Court is ready for Judgment.

No Statute of Jeofails in Criminal Cases.

*N. B.* No Judgment was given this Term, and the next, Mr. Rosewell pleaded the King's Pardon, and was discharg'd. See p. 1063, 1064.

No Judgment given. The Prisoner pardon'd.

Page 337. *The Tryal between Sir WILLIAM PRITCHARD, late Lord Mayor of the City of London, Plaintiff; and THOMAS PAPILLON, Esq; Defendant, Die Jovis 6 Nov. 36 Car. II. A. D. 1684. At the Session of Nisi Prius for the City of London, held at Guild-Hall.*

Narrat. for  
causing the  
Plaintiff to be  
Arrested, be-  
ing then Lord  
Mayor, having  
no probable  
Cause of  
Action.

“ THE Declaration sets forth, That whereas,  
“ the 12th of *February*, in the 35th Year of  
“ the now King, and before and after, for several  
“ Months, the Plaintiff was Mayor of the City of  
“ *London*, being duely Elected and Sworn into  
“ the Office. And whereas, according to the Cu-  
“ stom of the said City, Time out of Mind, he  
“ ought daily to attend the said Office, and execute  
“ the same according to the Honour and Dignity  
“ that belongeth thereunto. That the Defendant,  
“ *Thomas Papillon*, being one of the Commonalty  
“ of the said City, and under the Government of  
“ the Plaintiff, by Virtue of his Office aforesaid;  
“ not being ignorant of the Premisses, and falsly  
“ and maliciously envying the happy Estate of the  
“ Plaintiff in his said Office, and contriving unjust-  
“ ly to disturb him in the execution thereof; the  
“ said 12th Day of *February*, in the 35th Year a-  
“ foresaid, the Defendant, in order to vex the  
“ Plaintiff, not having any lawful or probable  
“ Cause of Action against him, did falsly and ma-  
“ liciously prosecute the King's Writ of *Alias Ca-  
“ pias*, out of the Court of *King's Bench*, against  
“ the Plaintiff, directed to the then Coroner of the  
“ City of *London*, and returnable, &c. *Pas.* then  
“ next following, to answer the now Defendant  
“ in a Plea of *Trespas*; and that afterwards, viz.  
“ the 24th of *April* in the 35th Year aforesaid, he  
“ deliver'd the said Writ to *John Brome*, Gent.  
“ then Coroner of the said City, and caused the  
“ Plaintiff, then being Mayor of the said City, in  
“ the Parish of *St. Mildreds*, in the *Paultry*, in  
“ the



" the Ward of *Cheap* to be taken and arrested,  
 " and detain'd in Prison under the Custody of  
 " the said Coroner, for the space of six Hours,  
 " to the Disgrace and Scandal of the Plaintiff  
 " and his said Office, as also the manifest Da-  
 " mage, Prejudice and Grivance of the Plaintiff:  
 " Whereas in Truth, and in Fact, the Defendant  
 " at the time of the taking, arresting, and de-  
 " taining of the Plaintiff in Prison, as aforesaid, had  
 " not any just or probable Cause of Action against  
 " the Plaintiff in the Premises; whereby the Plain-  
 " tiff says he is injur'd, and which he lays to his  
 " Damage 10000 l.

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To which the Defendant pleaded *Not Guilty*.

Mr. *Munday* open'd the Declaration, and Mr. *Attorney* shew'd that his Action was brought by the Defendant, with a Design to have created a Disturbance and Confusion in the City, in Order the better to carry on the Plot against the King, and his Brother the Duke.

Then Mr. *Keeling* was Sworn.

*Sol. Gen.* Pray tell my Lord and the Jury, if Mr. *Finch*.  
 you were made a special Bailiff to Arrest Sir *Will.*  
*Pritchard* when he was Lord Mayor, and what  
 you did upon it?

*Keeling.* Mr. *Richard Goodenough* had sent me  
 a Letter to meet him at Mr. *Russels*, a Cooks Shop  
 in *Ironmonger-Lane*; and accordingly the 24th of  
*April* I met him, and several others there: And I  
 went away a little while and came again; and while  
 I was gone, they put my Name into the Warrant,  
 and when I came back again, Mr. *Richard Good-*  
*enough* told me I must be concern'd in the Business  
 of Arresting my then Lord Mayor, Sir *William*  
*Pritchard*; and when I made a difficulty of it, he  
 press'd me to do it, and said it would be taken  
 ill by the Party if I refus'd; he meant, I suppose, the  
 discontented Party, the Faction, or what you  
 please to call it, that were not contented with the  
 Government of the City at that Time: He urg'd  
 it upon me with a great many Arguments, and at  
 last prevail'd upon me to go along with the Cor-  
 ner, and *Frank Goodenough*, his Brother, said he  
 would go with me: The Lord Mayor was at Gro-

*Keeling's* Evi-  
 dence of his  
 arresting my  
 Lord Mayor,  
 at the Suit of  
 Mr. *Papillon*,

That *Good-*  
*nough* told him  
 the Faction  
 would take it  
 ill, if he refus'd  
 to do it.

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*cers-Hall*, where he kept his Mayoralty, when we went to arrest him, there was some Disturbance upon it, among the Officers and People there. The Coroner came up to him, and said, Sir, I have a Writ against you; I pray you would please to give an Appearance, at the Suit of Mr. *Thomas Papillon*, and another at the Suit of Mr. *John Dubois*, and some Words there pass'd between him and the Coroner. And my Lord Mayor refusing to give any Appearance, the Coroner Mr. *Brome*, bid us execute our Warrants; upon which, I came up to my Lord Mayor, and touch'd him on the Shoulder; and said, I Arrest you at the Suit of *Thomas Papillon*, Esq; and one *Ferdinando Burley* arrested him again, at the Suit of Mr. *John Dubois*. Then the Coroner dismiss'd us, and as I take it, carried him home to his House.

*Sol. Gen.* How many might there be at *Russel's*, when you had Orders to Arrest my Lord Mayor?

That 30 or 40 of the Party met about the Arrest.

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*Keeling.* I believe there was about Thirty or Forty: About six Weeks, or two Months before this Meeting at *Russel's*; Mr. *Goodenough* was at meto be concern'd in this Matter, Mr. *Alhurst*, Alderman *Cornish's* Son-in-law was by then, but I did not comply: They told me my Lord Mayor and Court of Alderman had made an ill Return to the *Mandamus's* that were serv'd upon him, for the swearing of Mr. *Papillon* and Mr. *Dubois*, Sheriffs, and therefore Mr. *Papillon* and Mr. *Dubois* had good Cause of Action against him; and *Goodenough* said he had Orders from them to Arrest my Lord Mayor, and desir'd me to be concern'd, but they did not proceed then, because my Lord and his Brethren were gone out of Town to wait upon the King, I think.

*Mr. Serj. Maynard.* You say Sir, that *Goodenough* told you the discontented Party would be angry with you, if you did not do it: Upon your Oath, was the discontented Party named?

By the discontented Party, he meant those that would have Kill'd the King.

*Keeling.* No Sir, but that Party of which Mr. *Goodenough* and I then was; and they were the discontented Party I think, for they were so Discontented, that they would have Kill'd the King and the Duke.

Sir

Sir *Henry Tulse* was call'd.

The Council for the Defendant, objected to his being a Witness, for that he and the rest of the Court of Alderman had made a Purse to carry on this Suit: But Sir *Harry* being examin'd upon a *Voyer dire*, said he knew nothing of it, and he was admitted to be Sworn.

Mr. *Holt*. Pray give an Account what you know of this Matter.

Sir *Henry Tulse*. About four a Clock in the Afternoon; this Mr. *Keeling* and two more came to my House, and *Keeling* arrested me at the Suit of Mr. *Papillon*, and another of them did Arrest me at the Suit of Mr. *Dubois*, and told me I must give an Appearance; I said, I would consider of that, then they told me I must go to my Lord Mayor, who was in the Coroners Custody; but afterwards they said, they would take my Word till next Morning, and went away. I went down to *Skinners-Hall*, and found my Lord Mayor there, but no Aldermen, only his Officers; and he told me he was Arrested by the Coroner. There was presently a great Noise all about the City concerning my Lord Mayor's being Arrested, and abundance of People were gathered together about the Door; but there came a Company of the Train'd Bands, and kept all quiet: I ask'd Mr. *Brome* the Coroner, if I was a Prisoner too, for I had been Arrested by a Warrant pretended to come from him: He said, he had a Writ against me, and now I was there, he could not let me go till I had given an Appearance. So I took my self to be detain'd there with my Lord Mayor in Custody, and staid as long as he staid; and then went away with him, which was about Eleven a Clock.

Mr. *Wells* the Common Cryer was Sworn.

Mr. *Wells*. I was not in the Hall where my Lord Mayor was, but in another Room by; and the Officers came and told me I must come to my Lord Mayor quickly, for he was Arrested: When I came, my Lord Mayor bid me take the Sword and go along with him, for the Sword Bearer was not just at Hand. The Coroner said, he was his

Sir *Henry Tulse's* Evidence of his, and my Lord Mayors being Arrested.

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*Wells*, the Common Cryer's account of the Arrest.

Prisoner, and must go along with him to his House. My Lord Mayor bid me send out the Officers to Summon a Lieutenancy, which I did. I desir'd the Coroner and his Men to be gone: He said, except my Lord would give an Appearance, he must go along with him to his House, and thither we went, where my Lord was put into a little Room, where were none but my self and the Coroner as I remember. My Lord bid me go and see for Sir *James Edwards*, and Sir *Harry Tulse*, and my Lord Mayor that now is; so I went, but found they were Arrested before I came.

*Sir Geo. Jeffries.*

*L. C. J.* How did my Lord go away from thence.

*Mr. Wells.* In his Coach: *Mr. Brome*, the Coroner, was not there when my Lord went away, but there was *Goodenough*.

*Att. Gen.* The Soldiers prevented the Design, and so they let him go again.

*Sir John Peak* was Sworn.

*Sir John Peak* deposed, He brought his Regiment, by Order of the Lieutenancy, and prevented any Disturbance.

*Sir John Peak.* My Lord, I had Orders from the Lieutenancy to raise my Regiment, upon the News of my Lord Mayor's being Arrested; and I came with my Soldiers to *Skinner's-Hall*, where I heard my Lord Mayor was, and prevented any Stir, as it was fear'd there would have been; but *Mr. Keeling*, I believe, can tell something more of the Design than he has spoken; for I remember, at the Tryal of the Traytors in the *Old Baily*, he did say, That after my Lord Mayor was Arrested, they did intend something, but their Hearts mis-gave them when the Regiment was up.

*Papillon's* Council enter upon his Defence.

*Mr. Serj. Maynard.* My Lord, I am of Counsel in this Case with the Defendant *Mr. Papillon*. This is an Action upon the Case, wherein the Plaintiff declares, That the Defendant did Arrest him, being then Lord Mayor, without any probable Cause, and out of Malice. Now, my Lord Mayor, if he do Mistake in his Office, and do not do that which belongs to him to do; if he does any Man an Injury, or does that which is not Right in his Office, by which another Person is griev'd, he is as much subject to Actions, and to the Proceſs of Law, as any private Man in the City of *London*; and if

The Lord Mayor not exempt from Arrests, where there is a probable Cause.

we



we can give you any Account of a probable Cause for the Arrest, that is sufficient to justify us from this Action. The Question is not, Whether this or that Man were duly chosen into such an Office? but, Whether there were any probable Cause for the Defendant to contest about the Choice: And here the Case falls out to be thus; There was a Difference in the City of *London* about the Choice of Sheriffs, wherein the Defendant was one of the Competitors, and had many Suffrages, and was return'd by the Sheriffs to the Court of Aldermen to have a Majority, which gave him Occasion to apprehend he was rightly chose; now, though we insist not upon the Right of Election (that having been otherwise determin'd,) yet this surely was a probable Cause for him to proceed upon it, and he having no other Method to take for Settling this Matter, but to appeal to your Lordship, and that great Court where your Lordship sits, to have a Writ to command the Mayor to swear him into the Office, or shew good Cause why he did not. Accordingly a *Mandamus* was mov'd for and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not elected Sheriff of *London*; which Return we apprehended to be false, and to try the Truth of this Return, was the Action brought against the Plaintiff, and not to promote the Designs of a discontented Party, as has been insinuated: Upon this Action the Defendant proceeded regularly and orderly, applying himself in a decent manner to get an Appearance; for first we took out a *Latitat* against my Lord Mayor, and by the Attorney gave him Notice of it, and desir'd an Appearance, but he was not pleased to give an Appearance upon that Writ; we took out a *Capias*, and gave him Notice of it, but could have no Appearance; Whereupon we took out an *alias Capias*, which is the Writ mentioned in the Declaration, to which my Lord refusing to give an Appearance, the Officer was constrain'd to Arrest him. This was nothing but what the then Plaintiff apprehended he might lawfully do, and no Malice or ill Design is prov'd upon him. And I hope it will never come

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The Defendant's Council urge, That he had a probable Cause, the Plaintiff making a Return to the *Mandamus*, which they took to be false.

to that, That a Man (tho' mistaken) conceiving himself to have a Right of Action, and suing out the King's Writ, shall suffer for so doing, unless particular Damage be made appear. Here is a great Noise of Damage and Disgrace to the Plaintiff, and his Office and he has been pleas'd to reckon his own Damages at 10000*l.* but we say he has sustain'd no Damage by any thing we have done, and we are *Not Guilty* of this unreasonable and malicious Prosecution laid to our Charge.

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Mr. *Williams* spoke to the same Effect, and after him Mr. *Ward*, who saying that the Defendant had declared against the now Plaintiff in the Action above-mentioned, and design'd to proceed, but that the Right of Election had been since determin'd against him, at the late Tryal of the Rioters, and thereupon he desisted.

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My Lord Chief Justice reply'd, That Mr. *Ward* did not understand the Question, and that the Right of Election was not determin'd there.

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Mr. *Ward*. My Lord, If your Lordship would please to hear me, I would explain my self, I hope to your Lordship's Satisfaction.

L. C. J. Hear you, Why I did not interrupt you, Man, till you came to launch out into extravagant Things, that did not at all concern the Cause. Keep close to the Question we come here to Try, and I will hear you as long as you will: The single Question is here, Whether there were probable Cause for your Arresting the Plaintiff, or not?

Mr. *Ward*. My Lord, We did apprehend, I say, that we had a probable Cause; but when we found our Mistake, we discontinued our Action, paid Costs, and have a Receipt to shew for them. This was it I was saying.

Then they call'd their Witneses, and Mr.

*Brome* was Sworn.

*Brome*, the Coroner's Evidence of the Proceedings against my Lord Mayor.

*Brome*, the Coroner, depos'd, That a *Latitat* and *Capias* were brought to him by Mr. *Goodenough*, and that he waited several Times on my Lord Mayor for an Appearance, but, could not obtain it; and that he had Directions from Mr. *Goodenough*, Mr. *Papillon's* Attorney, not to Arrest

and the Sheriffs went with the Common Serjeant up to the Court of Aldermen, and acquainted them with it, and then they all came down again, and declared, there should be a Poll: That in the Evening, after the Poll was clos'd, the Shriefts came down upon the *Hustings*, and declared there were for Mr. *Papillon* and *Dubois* above two Thousand as I remember; and for the other Two, there were some Hundreds under two Thousand.

Answer'd, that that Poll was taken in a riotous Manner by those who had no Power to take it.

*Att. Gen.* We have more Evidence to bring in Answer to this: What they would excuse themselves by, is, that there was a probable Cause. Now no Man can ever shew, that for the Shrievalty, an Office of Burthen, Hazzard, and Expence, any Man did ever Sue; and they produce some of the Men that held up their Hands to prove that the Election fell upon *Papillon* and *Dubois*, but that could give them no pretence of Title, because a Poll was demanded by which it must be decided; and then another of the Witneses tell you what the Sheriffs did upon the Poll; but that can give no colour of Title neither, for that, those Sheriffs did in a riotous Manner assume the supreme Government of the City, and would have excluded my Lord Mayor from it; and for that riotous Assembly, they were Convicted here as Rioters, and Find'd for it; and had Mr. *Papillon* thought he had good Cause to bring this Action, he would have employ'd better Instruments to have proceeded in it than *Goodenough*: One who did not live in the City, or had any Thing to do in it, till brought into Office by Mr. *Bethel*, and was a Plotter in the late horrid Conspiracy; Nor is this Cause manag'd by Men of the Robe or, grave Citizens; but by a Cabal of Thirty or Forty Rioters, most of them in the Proclamation proscib'd as Traytors, and run away from Justice, upon the discovery of the Plot: All this speaks Malice and the worst of Malice. The Forty Men at the Consult at *Russel's*, did not meet to give order for an Appearance; but to make a Disturbance in order to bring about their main Plot:

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Arrest my Lord Mayor, if he could procure an Appearance without. That after he had made out Warrants on the *alias Capias*, and deliver'd them to *Keeling* and *Burleigh*, he went again to my Lord Mayor, to see if he could get an Appearance; and told him the Writs were renew'd at the Suit of Mr. *Papillon* and Mr. *Dubois*, and that the Deponent was press'd to make a Return, and therefore desir'd his Lordship would be pleas'd to give an Appearance: That his Lordship told him he was ready to submit to the King's Writ, but would not give an Appearance; and that thereupon the said Officers did, by the Deponent's Command, Arrest my Lord.

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L. C. J. Prithee, How came you to join these two People, *Keeling* and *Burleigh*, in this Business, (one lives at *Wapping*, and the other at *Westminster*,) and not one of the Sheriffs Officers?

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Brome. The Attorney named them to me, and told me he could get none of the Sheriffs Officers to do it; and I did not think it proper to employ any one that liv'd in the City to Arrest my Lord Mayor.

L. C. J. Did you ever, when you receiv'd a Writ to Arrest a Man, and were to give a Warrant upon it, call a Consult of Twenty or Thirty how to do it before this Time?

Brome. I did not do it now.

Att. Gen. How came you to discharge my Lord Mayor out of Custody.

Sir Rob. Sawyer.

Brome. I was taken into Custody my self.

Sol. Gen. Did you know any of the Company that met at *Russel's*, besides the *Goodenoughs*, and *Keeling*, and *Nelthorp*.

Brome. There were several that I knew by Sight, but I cannot remember their Names.

L. C. J. Was Mr. *West* there?

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Brome. I cannot positively say, Whether he was or not.

L. C. J. You, Brome, Was Mr. *Cornish* there?

Brome. Not that I know of.

Att. Gen. 'Tis strange we cannot learn who those Persons were that met there.

L. C. J. Oh! These Fellows have strange Memories for their Purposes.

Mr.

Plot: But when the Soldiers were up, then the Plot was spoil'd, and then my Lord Mayor may go home if he will.

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Then Mr. *Town Clerk*, and Mr. *Common Serjeant* were call'd, who depos'd, that Sir *Dudley North* was chosen Sheriff by my Lord Mayor, by Virtue of his Prerogative; and that my Lord Mayor and Aldermen declar'd him duly Elected. And that they had Directions to provide Books to take the Poll for Mr. *Box*, Mr. *Papillon*, and Mr. *Dubois*, and they did so; and upon closing the Poll, the Books were Seal'd up, and deliver'd to my Lord Mayor; and at a Common-Hall, afterwards, he did declare Mr. *Box* to be chosen the other Sheriff. That the Poll was, as it always ought to be, by the direction of my Lord Mayor: And that the Sheriffs are but Officers, and not the Judges and Managers of the Poll, without my Lord Mayor's Direction.

The Common Serjeant and Town Clerk depose that Sir *Dudley North* and Mr. *Box*, were duly Elected Sheriffs.

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Att. Gen. Pray, Did any Persons Poll at my Lord Mayor's Books for *Dubois* and *Papillon*?

Town Clerk. Not that I know of.

Serj. *Maynard*. It is nothing to the purpose who took the Poll, or who had a Right to take the Poll; but it was a Dispute (and some, it may be, could not Poll at one Place, and others would not Poll at the other) yet the lifting up of Two Thousand Hands, might make the Defendant think he was chosen Sheriff; and there lies the Cause of his Action, his *Apprehension of a Right*. And though it may be objected to the Prudence of my Client, to desire such an Office, yet that proves nothing of Malice in him against the Plaintiff. And as to the Objection to the Instruments that we made use of--- That our Attorney was in a Plot, &c. What is that to us? There is not the least Suspition upon us, though he is a bad Man that doth not make all his Clients bad. Now, Gentlemen, upon this Action we are not to be Fin'd: But they, if they can, are to shew what Damages the Plaintiff sustain'd by our Action: And, if what we have said, do not satisfy you that we had probable Reason for what we did, then you, upon your Oaths, are to give him what Damages, you, in your Consciences, think he has receiv'd by it.

“ Gentlemen

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Page 355.  
Page 356.  
The Chief  
Justice Obser-  
vations upon  
the Evidence.

The pursuing  
Malicious  
Ways to ob-  
tain a Right,  
makes a Man  
liable to an  
Action.

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" Gentlemen of the Jury, the Point of this Action before us, resolves it self into a very narrow  
" Compass, and is only this in short: Whether or  
" no the Plaintiff was Arrested by the Defendant  
" without probable Cause, and Maliciously. Now  
" Matters of Malice, are Things that remain in a  
" Man's Heart, and 'tis impossible to discover  
" whether another Man hath Malice against me,  
" if I do not see it in his Actions: Therefore you  
" must consider the Circumstances that do attend  
" this Action; if they are Malicious, then you are  
" to find for the Plaintiff. But, if they for the  
" Defendant, have offer'd to you any Circum-  
" stances that can convince you that he had any  
" probable Cause of Action, and that not attend-  
" ed with a Malicious Prosecution of that proba-  
" ble Cause; then the Issue is with the Defendant.  
" Now, in point of Law, I am to tell you, that  
" though I have a probable Cause of Action against  
" another, yet, if to obtain my end in that, I pro-  
" secute him maliciously, with a design to Ruin  
" him, or to put an Indignity upon him, or the  
" Character he bears in the Publick: or put an  
" Hardship or Difficulty upon him (I mean in  
" in point of Time) when it is probable the Re-  
" medy may be had at another time; and the same  
" Thing done with less Injury and less Trouble,  
" then an Action will lie against me; though it be  
" true, I had a conjectural Cause of Action against  
" him: The pursuing malicious Ways to obtain a  
" Right, makes a Man obnoxious to the Action of  
" the Party so prosecuted.

" But as to their probable Cause, suppose it  
" were a Question between me and *John a Stiles*  
" for the Place of Bridgmaster, for the purpose,  
" and a Poll is demanded and granted; if they that  
" have no Authority, shall go, after the Court is  
" adjourn'd by him that has Power, and take a  
" Number of Names, in the way of Poll, by them-  
" selves, and upon that come and say, that *J. S.* has  
" 2400, and I have but so many; that sure is not  
" any probable Cause, nor a Right. For you have  
" gone, here, out of the known and usual Method  
" in such Matters, and depend upon that which  
" can



" can give no Foundation of a Right at all. You  
 " may have 50000 Names for you after that rate,  
 " and yet not be Eleſted, or have probable Cauſe  
 " of any ſuch Apprehenſion.

" But, Gentlemen, to bring an Action alone, The Sueing  
for an Office  
of Burthen,  
gives a Suſpi-  
cion of Ma-  
lice.  
 " will ſcarce amount to a Proof of Malice, there-  
 " fore you muſt weigh the Evidence, Whether the  
 " Circumſtances do ſhew there was any Malice in  
 " Mr. Papillon. 'Tis true, a Man may lawfully  
 " ſue for ſuch an Office, and it is no Offence; yet  
 " it looks ſomewhat extraordinary, and that a  
 " Man has a Mind to do ſomething unuſual in the  
 " Place, that he ſhould ſue for it, eſpecially when  
 " he had Fin'd for the Office once before.

" My Lord Mayor of *London*, it is true, is not, Page 358.  
 " nor no Perſon whatever, exempt from the Law:

" If he owe a Man any Thing, he is bound to an-  
 " ſwer it to him, as much as the meaneſt Citizen.

" But is he to be Arreſted juſt at ſuch a Time, when The Arreſt-  
ing my Lord,  
before he was  
out of his Of-  
fice, when the  
City was in  
Confuſion, al-  
ſo implies  
Malice.  
 " he is Chief Governour of the City, and the Court  
 " of Aldermen too, becauſe they are his Aſſiſtants?  
 " And at ſuch a Time as this was, when the Go-  
 " vernment, both in the City, and elſewhere, was  
 " ſurrounded with Difficulties, and in great Dan-  
 " ger on all Sides. What occaſion was there for  
 " ſuch haſte in this Action? Would Mr. Papillon  
 " and *Dubois* have Starv'd, if it had been ſuſpended  
 " a while? Sir *William Pritchard* would have been  
 " as anſwerable to this, or any Man's Action, when  
 " the Year of his Office had been out; but it car-  
 " ries Malice and Vengeance in the very Face of  
 " it. And becauſe they would be ſure their Ma-  
 " lice and Revenge ſhould take place, they take  
 " the very Scoundrels of the Party to be employ'd  
 " in this great Work: The *Goodenoughs*, *Burleigh*,  
 " *Keeling*, and *Nelthorp*, who now ſtand Attaint-  
 " ed of High Treafon, muſt be called in, to conſult  
 " about a fit Man to make an Arreſt. It is plain,  
 " Gentlemen, what the Deſign was, from the be-  
 " ginning to the end; nothing but to cauſe a Tu-  
 " mult and Confuſion in the City, in order to put  
 " that damn'd helliſh Conſpiracy, for the Deſtructi-  
 " on of the King and his Brother, and every Man  
 " that was Honeſt and Loyal, in execution. Ano-  
 " ther

Page 359.  
 That the true  
 Deſign was to  
 procure an In-  
 ſurrection.

“ther Circumstance which is considerable in this  
 “Case, is the particular Persons that were sued.  
 “The *Mandamus*, That, was directed to the Lord  
 “Mayor and Aldermen in general, and the Re-  
 “turn was made in the Name of the whole Court.  
 “How comes it then, that my Lord Mayor, Sir  
 “*Henry Tulse*, and those other Gentlemen, must  
 “be Arrested, but Mr. *Cornish*, and his Party, are  
 “not meddled with? This is a Circumstance that  
 “carries Malice in it.

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Damages to be given, answerable to Mischief intended, and not according to what the Plaintiff actually suffered.

“ Gentlemen, as to the Damages, if you find for  
“ the Plaintiff, it is left to your Judgments to con-  
“ sider of, and give what you shall think fit upon  
“ this Occasion. It is true, it is not easy to af-  
“ certain particular Damages in such a Case; or  
“ to prove, that Sir *William Pritchard*, being in  
“ Prison five or six Hours, suffer’d so much Da-  
“ mages as comes to 10000 *l*. Yet, however, if  
“ the Thing for which the Action is brought, were  
“ design’d with Malice, though the ill Design be  
“ not effected, that is no Thanks to the Party, nor  
“ is to weigh with you; but the malicious Design  
“ must govern you. Now the Malice, here, was  
“ not against Sir *William Pritchard*, as such a par-  
“ ticular Man, but against my Lord Mayor; and  
“ the Government of the City, the Honour of  
“ your Chief Magistrate, and, indeed, the Ho-  
“ nour of the King, whose Substitute he was, is  
“ concern’d: And that puts a Weight upon your  
“ Enquiry into the Damages in this Case. You  
“ are to consider, you give Damages to the Plain-  
“ tiff, not as Sir *William Pritchard*, but as Lord  
“ Mayor. And your Severity in this Case, will  
“ deter all People from entering into Clans and  
“ Cabals to make Disturbances, and Affront the  
“ Government.

Page 361.

“ It was not, I dare say, out of a Frank, Generous Humour to oblige the City, that Mr. *Papillon* would have spent his Time and Money in the Office of Sheriff: No, I know he had better ways to employ both.

“ It was not the Generous Mind of Mr. *Bethel*,  
 “ that call'd him on to be Sheriff of *London*, to  
 “ entitle him to spend his Money ; but on pur-  
 “ pose

“ pose to be one of the first that should turn all  
 “ Things upside down in the City, and disturb  
 “ the Government. And they that succeeded him  
 “ carried on the Project; and they that would  
 “ have been in, but could not, had a Mind, no  
 “ doubt, to follow so Worshipful an Example as  
 “ he laid before them.

*Then the Jury withdrew, and after half an Hours* 10000 l. Da-  
*Stay, return'd with a Verdict for the Plaintiff;* mages given.  
*and Assess'd Damages to Ten Thousand Pounds, and*  
*Costs to Four Marks.*

L. C. J. Gentlemen, you seem to be Persons The Chief  
 that have some Sense upon you, and Consideration Justice com-  
 of the Government; and, I think, have given a mends the  
 good Verdict, and are to be greatly commended Verdict.  
 for it.

*The Tryal and Process of High Treason,  
 and Doom of Forfaulture, against Mr.  
 ROBERT BAILLIE, of Jerviswood, be-  
 fore the most Noble and Potent GEORGE  
 Earl of Linlithgow, Lord Justice Ge-  
 neral of the Kingdom of Scotland, and  
 the rest of the Lords of Justiciary, at  
 Edinburgh, the 23d Decemb. 1684.*

“ THE Indictment sets forth, That the Pri-  
 “ soner having most unjustly conceiv'd  
 “ a great and extraordinary Malice against his Ma-  
 “ jesty's Person and Government, and designing  
 “ most Traiterously to debar his Royal Highness,  
 “ his Majesty's only Brother, from his due Right  
 “ of Succession, did, amongst many other Traite-  
 “ rous Acts, tending to promote that Wicked De-  
 “ sign, endeavour to get himself Elected one of  
 “ the Commissioners for Negotiating the Settle-  
 “ ment of a Colony of this Nation in *Carolina*, in  
 “ one or other of the Months of *January, Febru-*  
 “ *ary, March, April, or May, 1683.* That he  
 “ might thereby have the freer Access to Treat  
 “ with the Earls of *Shaftsbury* and *Essex*, the Lord  
 “ *Russel*,  
 Vol. III. T

Page 362.  
 The Indict-  
 ment for High  
 Treason, in  
 endeavouring  
 to excite an  
 Insurrection  
 and Rebellion,  
 and for Con-  
 spiring the  
 Death of his  
 Majesty.

“ *Ruffel*, and others who had enter’d into a Con-  
 “ spiracy, in *England*, against his Majesty’s Person  
 “ and Government ; and with *Col. Rumsey, Wal-*  
 “ *cott, West, Ferguson*, and others who had conspir’d  
 “ the Murder of his Majesty, and of his Royal High-  
 “ ness. And finding that he could not get him-  
 “ self Elected one of the said Commissioners, he  
 “ resolv’d to go to *London* at his own Expence,  
 “ and declar’d to several, whom he took great  
 “ Pains to draw into the Conspiracy. That his  
 “ Design was, to push forward the People of *En-*  
 “ *gland*, who did nothing but Talk, that they  
 “ might go on effectually. And that after he had  
 “ settled a Correspondence, he went to *London* in  
 “ one of the aforesaid Months, with *Sir John Cock-*  
 “ *ran* and Commissary *Monro* ; and did then, and  
 “ there, transact with the said Conspirators, to  
 “ get a Sum of Money to the late Earl of *Argyle*,  
 “ a declared Traytor, for bringing Home Men  
 “ and Arms, for raising a Rebellion against his  
 “ Majesty, and Invading this his Native Country :  
 “ And so earnest was he in the said Design, that he  
 “ did Chide those *English* Conspirators, for not  
 “ timely sending the same. And persuaded the  
 “ said Earl of *Argyle*, to accept any Sum, rather  
 “ than not ingage in the Design.

“ That after the Prisoner had ingaged many of  
 “ his Country-men in *England*, and had assur’d his  
 “ Correspondents here, That the *English* were re-  
 “ solv’d to exclude his Royal Highness from his  
 “ due Right of Succession, thereby to incourage  
 “ them to concur in the said Rebellion and Exclu-  
 “ sion, he proceeded to enter into an intimate  
 “ Correspondence with *Mr. Robert Ferguson*, *Sir*  
 “ *Thomas Armstrong*, *Colonel Rumsey*, and *Walcott*,  
 “ who were concern’d in that horrid part of the  
 “ Conspiracy, which was design’d against the Lives  
 “ of his Majesty and his Royal Highness ; and did  
 “ sit up several Nights with them, to consult about  
 “ that Bloody Massacre. At least, the Prisoner  
 “ was, and is, Guilty of having Correspondence  
 “ with the late Earl of *Argyle*, and *Mr. William*  
 “ *Veitch*, declared Traitors ; and of Conspiring  
 “ to rise in Arms against his Majesty, and for Ex-  
 “ clusion



“ clusion of his Royal Brother; and of Conceal-  
 “ ing, and not Revealing the Consultations and  
 “ Proposals of others, for that Effect. Which be-  
 “ ing found by an Assize, he ought to be punish’d  
 “ with Forfaulture of Life, Land, and Goods, to  
 “ the Terror of others to commit the like here-  
 “ after.

*To which Indictment the Prisoner pleaded Not Guilty.*

The Council for the Prisoner objected, that he ought to have had fifteen Days Notice of Tryal. Which the Court over-rul’d, alledging, that was not the Practice, where the Offender was a Prisoner, and that he might be Try’d on Twentyfour Hours Notice.

They objected also, that the Prisoner had been prosecuted for the same Offence before the Council, and Fin’d a considerable Sum; and therefore ought not to be prosecuted again for that Crime.

His Majesty’s *Advocate* answer’d, That he confin’d himself to such Facts as were High Treason, and not mention’d in that Decision by the Council; and this Objection was likewise over-rul’d by the Court.

Then the Assize were sworn, which consisted of the Earl of *Strathmore*, the Earl of *Belcarras*, Sir *George Skeen*, and twelve other Gentlemen, to whom the Prisoner made no Objection.

The first Witness produc’d, was *Walter Earl of Tarras*.

The Council for the Prisoner objected, That the Earl was an Accomplice in the same Crime, that he had been Indicted, and confess’d the Fact; and thrown himself upon the King’s Mercy; and that he now came to testify against the Prisoner, in order to merit his Pardon, and therefore he could not be a Legal Witness.

But the Court ruled, That in Cases of Treason, Accomplices were Legal Witnesses, and order’d him to be receiv’d as a Witness.

The Earl depos’d, That about the Time Sir *John Cockran* and Commissary *Monro* got their Commission from the *Carolina Company*, for *London*; the Prisoner desir’d the Deponent to speak to *Monro*,

Page 363.

No Time for Tryal can be demanded in Scotland.

Page 364.

Two Noblemen, and Thirteen Commoners, upon the Assize (or Jury.) An Accomplice who was Indicted, and confess’d the Crime, admitted a Witness.

Page 365.

Earl of Tarras’s Evidence of the Prisoner’s going to London to con-

cert Matters with the English Conspirators, and of the 10000 l. to be furnish'd Argyle, to make an Insurrection.

Page 366.

to get him added to that Commission; but being disappointed, he told the Deponent, he would go to *London*, however, at his own Expence, for the *Carolina* Business was but a Blind, the true Design being to push forward the People of *England*, who did nothing but Talk, to go about their Business more effectually. That the Prisoner, at his going to *London*, settled a Correspondence with the Deponent, and they were to give each other an Account of what occur'd in the respective Kingdoms: That the Prisoner said, A Bill of Exclusion was the only Way to secure the Protestant Religion; and that the King might be induc'd to do it, if the Parliament would take brisk Measures with him: And that these Words were spoken before the Prisoner set out for *London* with *Monro*. That the Prisoner sent the Deponent Letters from *London*, giving an Account, that Things were in great Disorder there, but he hop'd effectual Courses would be taken to remedy them. And particularly, Mr. *Robert Martin* brought one Letter from the Prisoner, unsubsrib'd, but the Deponent knew it to be his Hand: And that *Martin* told the Deponent, Things in *England* were in great Disorder, and like to come to an Height; and that the Country Party were considering on Methods for securing the Protestant Religion. That the late Earl of *Argyle* was to have 10000 l. (but the *Scotchmen* at *London*, would have had 30000 l. for him) which was to be sent over to *Holland*, to provide Arms. That *Argyle* was to land with these Arms in the *West Highlands* of *Scotland*; and that the Prisoner was to be sent to him, in *Holland*, with the Money.

That thereupon, the Deponent, and *Philphaugh*, met *Pulwort* at *Gallowshiels*, and there they consulted what Measures were properest to be taken, and what Posts they should surprize in Case of an Insurrection in *England*: And that there was a Word and a Sign agreed to be us'd among the Conspirators. The Sign was, the loosing a Button on the Breast; and the Word was *Harmony*. He farther depos'd, that since *Baillie* of *Jerviswood* was a Prisoner in the *Talbooth*, he spoke to the Deponent to Advertise *Torwoodlie*, to acquaint Mr. *Will. Veitch*,  
a For:

a Forfault Traytor, who was in *Northumberland*, that he should keep himself close, and be on his Guard, lest he should be taken. And this is the Truth, as he should answer to God.

*Alexander Monro* of *Bearnotts*, deposed, That the Earl of *Tarras* proposed to him, that the Prisoner might be one of the Commissioners for the Affair of *Carolina*; but that the Deponent answer'd he could not be a Commissioner, because he had no Interest in that Affair. That the Prisoner waited for the Deponent at *Wooler*, and went along with him to *London*; and that by the Way, he us'd to lament the Hazard our Laws, Liberties, and the Protestant Religion were in. That the Prisoner spoke to the Deponent, and others at *London*, more than once, about getting Money from the *English*, to be sent to the late Earl of *Argyle*, for bringing home Arms for the said Earl's Use, as he understood, for carrying on an Insurrection and Rebellion in *Scotland*. That in the Prisoner's Chamber, in *London*, Mr. *William Veitch*, a Forfault Traitor, was present; and that Sir *John Cockran*, did, at that Meeting, speak of Money to be sent to *Argyle*, for Arms, to invade the Kingdom of *Scotland*; and that some of them said, there would be Twenty Thousand Men in *Scotland*, to assist in the Rebellion. That he heard Sir *John Cockran* and the Prisoner speaking about it, but could not be positive which of them said that. He deposed, that at that Meeting he heard the Prisoner speak, and that he did not oppose that Treasonable Proposal, or contradict the Overture made by Sir *John Cockran*.

*Monro* deposes the Prisoner would have been a Commissioner for the *Carolina* Business.

That he solicited Money for *Argyle*.

That Mr. *Robert Martin* was sent down, from that Meeting at the Prisoner's Chamber, to *Scotland*, to try what the People of *Scotland* would do; and that it was understood, that the People of *Scotland* should not Rise, till there should be a Rising in *England*; and that the Commission was granted to Mr. *Robert Martin* by all the Persons present, whereof the Prisoner was one: And that there were present, the Lord *Melville*, Sir *John Cockran*, *Cessnocks* Elder and Younger, Mr. *William Castares*, Mr. *William Veitch*, the Prisoner,

*Martin* sent to the Conspirators in *Scotland*, from the Prisoner's Chamber.

and the Deponent; and that they did contribute Money for Mr. *Martin's* Journey. That on *Martin's* Return, the Prisoner told the Deponent that Matters were in such a Condition in *Scotland*, as a little would kindle the Fire, in order to a Rebellion.

*Murray's* Evidence of his meeting *Martin* when he came from *London*.

*James Murray* of *Philiphaugh*, depos'd, that he was at Mr. *Pringle's* at *Torwoodlie*, in *May* 1683. where he met Mr. *Robert Martin*, who was lately come from *London*. That the Deponent talk'd with him of the present Condition and Temper of *England*, and particularly of *London*: And *Martin* said, they were much Irritated through some Attempts upon their Privileges; either as to the Concern of the Sheriffs, or their Charter; but that all honest Men were of good Heart, and very Brisk.

Page 367.

That *Torwoodlie* afterwards told this Deponent, That there were great Matters in Agitation at *London*; and that Mr. *Martin* was come down with a Commission from our Friends there. That Matters were now come to a *Crisis*, and that he had Reason to think *England* would shortly draw to Arms, and stand by them, till they were satisfied about the Bill of *Exclusion*, and what other *Security* they could propose, for the Protestant Religion, and their Liberties. And that it was no Project of any inconsiderable Party, but a Design through the Kingdom. And that many of the finest Men, and of the greatest Interest and Credit there, had adjusted, almost, every Thing necessary for the Purpose; and had concerted Matters with our Friends there, in order to concur with us; and had agreed to advance Money for furnishing Arms here.

Page 373.  
*Hugh Scott's* Evidence.

*Hugh Scott*, Laird of *Gallowshiels*, depos'd, That in *May* 1683. the Earl of *Tarras*, *Hume* of *Polwart*, and the Laird of *Philiphaugh*, came to the Deponent's House, himself being then absent; but at his coming Home they were speaking of the Security of the Protestant Religion; and of a Party in *England*, who would secure or seize the King or Duke; and that there were Discourses and Proposals, that if the *English* would rise in Arms, their

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Friends in the South Shires should rise with them; and that they should seize the Horses belonging to the King's Troops, where they graz'd, and the Town of *Berwick* and the Castle of *Stirling*; and likewise it was there discours'd, concerning the late Earl of *Argyle's* coming to Invade *Scotland*, but because of the Uncertainty of Sea-Voyages, there was not much Stress laid upon it. That it was also propos'd, That Endeavours should be used to learn what Arms were in the Country; and that it was said, If the Earl of *Tarras*, *Philiphaugh*, *Torwoodlie*, *Polwort*, and some others, would draw to Horse when the Raising should be in Readiness, it might be expected that the South Parts of *Teviotdale* and *Selkirkshire* would join with them; that of these Matters all who were present discours'd, as of an Affair that they were agitating, and wherein themselves were particularly concern'd, though at that Time they came to no Resolution.

Mr. *William Carstares* depos'd, That about November or December 1682. *James Steuart*, Brother to the Laird of *Cultnefs*, wrote a Letter to him from *Holland*, importing, That if any considerable Sum could be procur'd from *England*, that something of Importance might be done in *Scotland*: That he communicated this Letter to Mr. *Sheppard*, of *Abchurch-lane*, who told him he had communicated the Contents of the Letter to Colonel *Sidney*, and that Colonel *Danvers* was present; and said that Colonel *Sidney* was averse to employing the Earl of *Argyle*, or meddling with him, judging him to be too much affected to the Royal Family, and inclin'd to the present Church Government. That Mr. *Sheppard* press'd, that the Deponent being going over to *Holland*, he might have some Commission to the Earl of *Argyle*, but the Deponent refus'd to be concern'd in it; and that he went over into *Holland* without any Commission from any body; but he discours'd with the Earl when he was there, of what Mr. *Steuart* had writ about the Money, and of Raising 1000 Horse and Dragoons; and my Lord *Argyle* was of Opinion, that without such a Number of Horse and Dra-

Page 371.  
*Carstares's* Evidence of the Prisoner's being at *London*, and concerning Measures with the *English* Conspirators.

Page 372.

Dragoons nothing was to be done; and that he had calculated the Expence for Arms and Ammunition, and less than 30000 *l.* would not be sufficient, and I, the Deponent was desired earnestly to solicit that Matter in *England*.

And of my  
Lord *Russel*'s  
being con-  
cern'd in that  
Plot.

That the next Day after the Deponent return'd to *England*, he met with Sir *John Cockran*, who, with Commissary *Monro*, and the Prisoner, were at *London* before he came over, and that having acquainted Sir *John Cockran* with the Earl's Demands of 30000 *l.* and the 1000 Horse and Dragoons, Sir *John* carried him to my Lord *Russel*, to whom the Deponent propos'd the Affair, but my Lord being an absolute Stranger to the Deponent, he had no Answer at that Time: But afterwards having met him accidentally at Mr. *Sheppard*'s House, where the Lord *Russel* came to speak to *Sheppard* about the Money above-named, as Mr. *Sheppard* told the Deponent. The Deponent when they had done talking, desir'd to speak to the Lord *Russel*, which he did, and having re-iterated the former Proposition for 30000 *l.* and the 1000 Horse and Dragoons, the Lord *Russel* told the Deponent, They could not get so much rais'd at the Time, but if they had 10000 *l.* to begin, that would draw People in, and, when they were once in, they would soon be brought to more; but as for the 1000 Horse and Dragoons, he could say nothing at the present, for that must be concerted upon the Borders. That the Deponent had made the same Proposal to Mr. *Ferguson*, who was much concern'd in the Affair, and zealous for the Promoting of it. That the Deponent met twice or thrice with the Lord *Melvil*, Sir *John Cockran*, the Prisoner, Commissary *Monro*, the two *Cessnocks*, *Montgomery* of *Landshaw*, and one Mr. *Veitch*, where they discours'd of Money to be sent to *Argyle*, in order to the carrying on the Affair, and though he cannot be positive the Affair was named, yet it was understood by himself, and as he conceives, by all present, to be for Rising in Arms, for Rectifying the Government.

That *Monro*, Lord *Melvil*, and the two *Cessnocks*, were against meddling with the *English*, because

cause they judg'd them Men that would talk, and would not do, but were more enclin'd to do something by themselves; and that the Prisoner, the Deponent, and Mr. *Veitch*, were for taking Money at one of these Meetings; and it was resolv'd that Mr. *Martin* should be sent to *Scotland* to desire their Friends to hinder the Country from Rising, or taking rash Resolutions, till they should see how Matters went in *England*. That *Martin* did go, at the Charges of the Gentlemen that met, and was directed to the Laird of *Polwarth* and *Torwoodlie*, who sent back Word, It would not be an easie Matter to get the Country to concur: But afterwards, in a Letter to *Monro*, *Polwarth* wrote that the Country was readier to concur than they had imagined.

That a Letter coming from *Holland*, from *Argyle* to Major *Holms*, intimating that he would join with the Duke of *Monmouth*, and follow his Measures, or obey his Directions: This Mr. *Veitch* thought fit to communicate to the Duke of *Monmouth*, and for the understanding of it, it was brought to the Deponent, and he gave the Key to Mr. *Veitch*, who, as the Deponent was inform'd, was to give it and the Letter to Mr. *Ferguson*, and he was to shew it to the Duke of *Monmouth*, but what was done in it the Deponent knows not. That the Deponent heard of the Design of Killing the King and Duke from Mr. *Sheppard*, who told him, some were full upon it. That the Deponent heard *Aaron Smith* was sent by those in *England*, to call Sir *John Cockran* on the Account of *Carolina*, but that he does not know *Aaron Smith*, or any more of that Matter, not being concern'd in it. That *Sheppard* named Young *Hambden* frequently, as concern'd in these Matters.

Mr. *Sheppard*  
privy to the  
Design upon  
the King's  
Life.

*Hambden* in the  
Conspiracy.

He deposes farther, That *Veitch* sometimes lodg'd at *Nicholson's* by *London-Wall*, and sometimes with the Widow *Hardcastle* in *Moor-Fields*.

That the Deponent did communicate the Design on Foot, to Dr. *Owen*, Mr. *Griffil*, and Mr. *Mede* at *Stepney*, who all concurr'd in the Promoting of it, as also one *Freth*, a Counsellor in the *Temple*; and that *Nelthrop* frequently spoke

Page 373.  
Dr. *Owen*, and  
*Mede* the  
Preacher, in  
the Conspiracy.

to

to the Deponent of the Money to be sent to *Argyle*. That *Goodenough* did once insinuate to the Deponent, That the Lords were not inclin'd to the Thing; and that they would see what they could do in the City.

That the Deponent saw Mr. *Ferguson*, and Mr. *Rumsey*, lurking, after the Plot broke out, at some new Buildings near *Bishopsgate-street*, whither he was directed by the Prisoner, who was desirous to know how Things went.

Then His Majesty's Advocate produc'd the Examination of *Thomas Sheppard*, of *London*, Merchant, taken upon Oath the 23d of *Decemb.* 1683. before the Right Honourable Mr. Secretary *Jenkins*.

*Sheppard's Examination before Secretary Jenkins,*

Concerning the Scots coming to Town to settle Matters with the Conspirators here.

He depos'd, That *Ferguson* told him about *April* last, that an Insurrection was intended both in *England* and *Scotland*; and that for Settling that Affair betwixt the Two Nations, Mr. *Baillie*, the Prisoner, Mr. *Monro*, Sir *John Cockran*, Sir *Hugh* and Sir *George Campbells*, and some others, were come to Town: That the Deponent had some Acquaintance with the Prisoner, Mr. *Monro*, and Sir *John Cockran*: And that the Prisoner told the Deponent, *Argyle* demanded 30000 *l.* of the *English*, to capacitate him to begin the Business in *Scotland*; and that the Prisoner told the Deponent, that having talk'd with the Lord *Ruffel* and others, he found an Impossibility of Raising that Sum; that afterwards the Prisoner acquainted the Deponent, they were certainly promis'd 10000 *l.* which was agreed to be paid into the Deponent's Hands, in order to be remitted to *Holland*, for Providing Arms; that both Sir *John Cockran*, and the Prisoner, lamented the Delays that were made in Paying in the Money, and said they fear'd it would be too little if it were paid in: And the Deponent being ask'd to explain what he meant, by the Words to capacitate him (*Argyle*) to begin the Business, he said, He understood by the Word *Business*, an Insurrection in *Scotland*.

His Majesty's Advocate also produc'd the Information of *Zachary Bourn*, of *London*, Brewer, taken

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ken upon Oath the 10th of *December*, 1683. before the Right Honourable Mr. Secretary *Jenkins*.

This Informant depos'd, That Mr. *Baillie* (the Prisoner) sat up one Night, if not two, with Mr. *Ferguson*, and went several Times in the Evening with him to the Duke of *Monmouth*, and the Chief Managers of the Conspiracy; that *Ferguson* told the Deponent, that he the said *Baillie* was the Chief Man for the *Scots*, next to the Lord *Argyle*; that the said *Baillie* did sit up the greatest Part of one Night with the said *Ferguson*; at which Time the Deponent believes they were busy in preparing the intended Declaration, for that *Ferguson* was about to shew the Deponent such a Paper, but Company came up and prevented him; that *Ferguson* told the Deponent, That the main Business of the said *Baillie* in meeting the said Conspirators, was to get from them the 10000*l.* promised, for the Buying Arms for the Insurrection intended in *Scotland*.

Page 374.  
*Bourn's* Deposition of the Concern the Prisoner had in the Plot.

His Majesty's Advocate likewise produc'd several Warrants and Papers, to prove that those Depositions were sign'd by Sir *Leolin Jenkins*.

He also produc'd the Books of Adjournal, bearing Mr. *William Weitch* to be a Forfault Traytor, and the Act of Parliament whereby the Forfaulture is ratified.

Then his Majesty's Advocate having summ'd up, and made his Observations on the Evidence, the Court ordered the Assize to Inclose and Return their Verdict on the Morrow Morning by Nine a-Clock.

Page 377

*Edinburgh, Decemb. 24, 1684.*

The said Day the Persons who pass'd upon the Assize of Mr. *Robert Baillie*, of *Jerviswood*, return'd their Verdict in the Presence of the said Lords of Justiciary, whereof the Tenor follows. The Assize, all in one Voice, finds the Crimes of Art and Part in the Conspiracy and Plot libell'd; and of Concealing and not Revealing the same, clearly proven against Mr. *Robert Baillie* the Pannal, in respect of the Depositions of Witnesses and Admicles abduced.

The Prisoner convicted.

Sic subscribitur,

*Strathmore Chancellor*, [Foreman.]

After

Page 378.  
Judgment  
pronounc'd.

After the Opening and Reading which Verdict of Assize, the Lords Justice General, Justice Clerk, and Commissioners of Justiciary, by the Mouth of *James Johnstoun*, Dempster of Court, Decerned and Adjudged the said *Mr. Robert Baille*, of *Ferviswood*, To be taken to the *Mercat Cross* of *Edinburgh*, this 24th Day of December Instant, betwixt Two and Four a Clock in the Afternoon, and there to be Hang'd on a Gibbet, till he be Dead, and his Head to be Cut off, and his Body to be Quartered in Four, and his Head to be Affixed on the Nether-bow of *Edinburgh*, and one of his Quarters to be affixed on the Tolbooth of *Jedburgh*, another on the Tolbooth of *Leneck*, a third on the Tolbooth of *Air*, and a fourth on the Tolbooth of *Glasgow*; and ordains his Name, Fame, Memory and Honours, to be Extinct, his Blood to be Tainted, and his Arms to be Riven forth and Delate out of the Books of Arms, so that his Posterity may never have Place, nor be able hereafter to Brink or Joyse any Honours, Offices, Titles, or Dignities within this Realm, in Time coming. And to have Forfaulted, Amitted and Trut, all and sundry his Lands, Heritages, Tacks, Steadings, Rooms, Possessions, Goods, and Gear whatsoever pertaining to him, to our Sovereign Lord's Use, to remain perpetually with his Highness in Property. Which was pronounc'd for Doom.

Sic subscribitur,

|                |             |
|----------------|-------------|
| Linlithgow,    | Roger Hoge, |
| James Fowlis,  | A. Seton.   |
| J. Lockart,    | P. Lyon.    |
| David Balfour, |             |

Extracted forth of the Books of Adjournal, by me *Thomas Gordon*, Clerk to the Justice-Court.

Sic subscribitur,

*Tho. Gordon.*

The

*The Tryal of TITUS OATES in Easter-Term, the 8th May. 1 Jac. II. 1685, upon an Indictment for Perjury, in the Court of King's-Bench.*

**A**fter Proclamation for Silence, the Defendant was call'd, and appeared in Person, being brought up by Rule from the *King's-Bench* Prison, where he was in Custody.

He was permitted to sit within the Bar, that he might the more conveniently order his Papers, and manage his Defence.

The Defendant permitted to sit within the Bar.

Sir *William Dodson* being the first of the Jurors that was call'd, Mr. *Oates* Challeng'd him Peremptorily; but the Court inform'd him he must shew some Cause why he Challeng'd him; which the Defendant not being able to do, Sir *William* was Sworn.

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Afterwards the Defendant Challeng'd Mr. *Benjamin Scutt*, because he was upon the Grand Jury, who found the Indictment; and this, the Court allowing a good Cause of Challenge, Mr. *Scutt* was set by. Mr. *Kemp* also was Challeng'd by the Defendant, for that he was upon the Grand-Jury, but the Defendant not Challenging him, till after he was Sworn; the Court told him he Challeng'd too late, however Mr. *Attorney* consented to wave him, and he was withdrawn.

The having been upon the Grand Jury allow'd a cause of Challenge.

The Names of the Twelve that were Sworn, were,

|                              |   |                            |
|------------------------------|---|----------------------------|
| Sir <i>William Dodson</i> ,  | } | <i>Roger Reeves</i> ,      |
| Sir <i>Edmund Wiseman</i> ,  |   | <i>Ambrose Isted</i> ,     |
| <i>Richard Aley</i> ,        |   | <i>Thomas Blackmore</i> ;  |
| <i>Thomas Fowles</i> ,       |   | <i>Peter Pickering</i> ,   |
| <i>Robert Beddingfield</i> , |   | <i>Henry Collier</i> , and |
| <i>Thomas Rawlinson</i> ,    |   | <i>Richard Howard</i> .    |

The Court deny an *Habeas Corpus* to bring up a Prisoner in Execution, who was a Witness, and said twould be an Escape.

The Defendant mov'd for a *Habeas Corpus* to bring up Three of his Witnesses, who were in Execution in the *King's-Bench*; but the Court told him, they could not do it by Law, it would be an Escape.

Then

Then the Indictment was read in *English*, and the Jury charg'd to enquire, whether the Defendant was Guilty of this Perjury whereof he had been Indicted.

The Indictment for Perjury, in swearing himself and others at a treasonable Consult the 24th of April 1678. When in truth, he was not at such Consult, &c.

“ THE Indictment sets forth, That one Thomas White, alias Whitebread, William Ireland, John Fenwick, Thomas Pickering, and John Grove, the 16th of December, 30 Car. II. were Indicted at Hicks's-Hall, in the County of Middlesex, for High Treason, in Conspiring the Death of the King. And that the 17th of December in the same Year, the said Ireland, Pickering, and Grove were Tryed at the Old-Baily, London, upon that Indictment; and that Titus Oates was produc'd as a Witness for the King against them; and being Sworn to give Evidence to the Jury, who were Impannel'd and Sworn to try that Cause: He did depose and swear, that there was a treasonable Consult of Jesuits held at the White-Horse-Tavern in the Strand, in the County of Middlesex, the 24th of April 1678. At which Consult, Whitebread, Fenwick, and Ireland aforesaid, and the said Titus Oates were present; and that they seperated themselves into several Companies, and came to a Resolution to Murder the King; and that he the said Titus Oates carried the said Resolution from Chamber to Chamber, to be Signed by them, meaning the Jesuits; whereas in Truth and in Fact, he the said Titus Oates was not present at any such Consult the 24th of April 1678, nor carried such Resolutions from Chamber to Chamber, to be Sign'd: And so the said Titus Oates, the said 17th of December, in the 30th Year aforesaid, by his own proper Act and consent of his most wicked Mind, voluntarily and corruptly in Manner and Form aforesaid, did commit wilful and corrupt Perjury, to the dishonour of God, in contempt of the Law, to the evil Example of others, and against the King's Peace, &c.

Oates. I desire that that Part of the Record, wherein I am said to have Sworn such and such, and such

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such Things may be read distinctly in *Latin*: (*which was done*) after which, he observ'd; That when it was said, he swore that he carried the Resolution from Chamber to Chamber, and saw it Sign'd by them; the Word is *Signat*, and that the Perjury assign'd, is, that he was not present at that Consult, nor did carry the Resolution from Chamber to Chamber to be Sign'd, and there the Word was *Signand*: And he conceiv'd, if the Word *Signat* was us'd in setting forth the Oath that he made; the Assignment of the Perjury ought to follow that Form, and the Word there ought to be *Signat* too, and being otherwise it was an Error.

The Defendant excepts to the Indictment.

The Court told him, his Motion was Improper now, he must move it in Arrest of Judgment, if he were Convicted, for it was the Fact only that was to be Try'd at present.

And is told that this was not a proper time to except to the Indictment.

Then Mr. *Phipps* open'd the Indictment, and Mr. *Attorney* shew'd the Nature and Course of the Evidence.

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*Sol. Gen.* We shall first produce the Record of *Ireland's* Tryal, and then by Witnesses *Viva Voce*, who were present at that Tryal; we shall prove what he Swore, and then prove that Oath of his to be false.

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Mr. *Swift* was Sworn.

He depos'd, that the Copy he produc'd was a true Copy of the Record of *Ireland's* Tryal, having examin'd it with the Record it self.

The Records of *Ireland's* Conviction prov'd and Read.

The Defendant desir'd the whole might be Read, *which was done*: Then the Defendant desir'd it might be read in *English*; but the Court said they understood it themselves, and should tell the Jury, that it was only the Copy of a Record, to prove that *Ireland* was try'd for High Treason at the *Old Baily*, the 17 *December* 1678.

Then Mr. *Foster* was Sworn.

*Att. Gen.* Pray acquaint the Court, whether Dr. *Oates* appear'd as a Witness at *Ireland's* Tryal, and what he did there depose about a Consult in *April* 78.

Sir Robert Sawyer.

Mr. *Foster*. My Lord, I was so unhappy to be on that Jury, by whom Mr. *Ireland*, *Pickering*, and

Mr. *Foster's* Evidence of what *Oates*

swore at *Ireland's* Tryal.

and *Groves* were try'd, in *December 78*. I saw *Mr Oates* Sworn as an Evidence for the King; and he depos'd, that there was a Meeting of several *Jesuits* at the *White-Horse-Tavern* in the *Strand*, upon the 24th of *April 1678*; and that *Mr. Ireland, Whitebread, and Fenwick* were present at the Meeting, and that, there they did consult the Death of the King, and the altering of the Religion, and some went, and others came: At last they reduc'd themselves into several smaller Companies or Clubs, and came to a Resolution, that *Pickering and Grove* should Assassinate the King; for which, the one was to have 1500 Pound, and the other 30000 Masses said for him; and that this Resolution was drawn up by one *Miro*, and that he himself went with this Resolution to several of their Chambers: He went to *Whitebread's* Chamber, and saw *Whitebread* sign it: He went to *Fenwick's* Chamber, and saw *Fenwick* sign it; and went to *Ireland's* Chamber, and saw *Ireland* sign it upon the 24th of *April 78*. I am positive in this, because I took notice at the Tryal, being a Jurymen; and afterwards compar'd them with the Tryal, and found they agreed; and I have kept these Notes by me ever since.

*Oates*. In the Oath that I took, did I call it a Consult, or a traiterous Consult?

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*Foster*. I think he call'd it a traiterous Consult.

*Oates*. Did I swear that all these three *Jesuits* were present at one Time; or how many of them?

*Foster*. You Swore that *Ireland, Pickering, and Grove* were at that Consult; but whether they were all three of them there at one Time; or which of them were together, I cannot tell; but you Swore they were there, and came to such a Resolution; and you carried it to all their Chambers, and did see them Sign it.

*Oates*. Did I Swear they resolv'd to Kill the King at the *White-Horse-Tavern*, or was that Resolution made after they seperated into lesser Clubs.

*Foster*. They came to a Resolution you said at the *White-Horse-Tavern*; and it was there drawn up

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up by one *Mico*, I think, and it was carried by you, for every one to Sign it, from Chamber to Chamber, for I remember you were ask'd the Question, whether you saw them Sign it? And you answer'd, that you did carry it, and saw them Sign it.

*Oates*. Do you remember it so particularly, as to say what I Swore; whether I did carry it to be Sign'd: Or, carried it, and saw them Sign it?

*Foster*. You said, you carried it to be Sign'd, and saw it Sign'd.

*Oates*. I hope, I may ask this Gentleman how he comes to remember all this, after so long a Time?

*Foster*. Truly, it is so long ago, that had I not taken these Notes at the Tryal, I had not been able to have given so good an Account.

*Oates*. Did I Swear, they met all in one Room; or in several Rooms at the Tavern?

*Foster*. You Swore they were in several Rooms.

*Oates*. Then I would ask him, whether he were then satisfied, that *Ireland* was Guilty?

*L. C. J.* The meaning of the Question is, I suppose, whether you did believe Mr. *Oates* at that Time? *Sir George Jeffries.*

*Foster*. Yes, my Lord, I had no Reason to the contrary.

*L. C. J.* But do you believe him now?

*Oates*. We know how Juries have gone of late.

*L. C. J.* I hope so as we shall never see them go again.

*Oates*. My Lord, I speak of later Times than *Ireland's* Tryal.

*Foster*. My Lord, I have liv'd so long in the City of *London* without a Blemish, I hope it will not be thought I would give a corrupt Verdict.

*L. C. J.* Mr. *Oates*, ask as many Questions as you will, that are proper to be ask'd, but I'll have no Descants or Reflections, I know him, and he is very well known in the City of *London*; he is a Man of very considerable Quality, and very good Repute.

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## The T R Y A L of

*Oates.* I do assure you, I design'd no Reflection upon Mr. *Foster*: But I desire to ask him, Why, at the beginning of his Evidence, he said, It was his Unhappiness to be a Jurymen at that Time?

*Foster.* Really, Sir, I think it not a Happiness, to be of a Jury where the Life of Man is in Question; and if I could have avoided it, I should have been very glad to have been excus'd.

*Att. Gen.* We shall call no more to this Point; Mr. *Oates* has printed it in his Narrative, as we have now prov'd it.

*Oates.* My Lord, I would put this Question to the Court, Whether this be a Proof sufficient for this Point?

*L. C. J.* I leave that to the Jury, it is a Point of Fact that they are to try.

*Oates.* I beseech your Lordship, that the Court would be pleased to give me an Answer?

*L. C. J.* If you ask Impertinent Questions, the Court is not bound to answer them.

Then *Martin Hillsley*, Esq; was Sworn.

*Att. Gen.* Pray acquaint the Court, what Time you came from *St. Omers*, in the Year 78?

*Hillsley* deposes  
he left *Oates*  
at *St. Omers*,  
in April 78.

*Hillsley.* I came from *St. Omers* the 24th of April, N. S. in the Year 78. The 23d, I saw the Prisoner, Mr. *Oates*, at *St. Omers*, and went to School with him. When I came from *St. Omers*, the 24th I went to *Calais*, and from thence to *Dover*. I never saw him all the Way, though he swore he came to *England* with me; and I am confident he was not in the same Ship I came over in.

*Att. Gen.* Was he for some Time before that, constantly at *St. Omers*?

*Hillsley.* We went perpetually to School together.

*L. C. J.* What Time did you take Shipping, after you left *St. Omers*?

*Hillsley.* I went from *St. Omers* on the Sunday Morning: On Monday I took Shipping from *Calais* to *Dover*, and I arriv'd in *England* at Ten a Clock the same Night. From thence I came to *Bochton-street*, where I lay four or five Days: And then I came to *Cittenbourn*, and by long Sea, from thence

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thence to *London*. It was about *Monday* Se'night, after I left *St. Omers*, that I came to *London*.

*Att. Gen.* Do you remember where you met *Mr. Burnaby*?

*Hilsley*. I think I met him at a Relations where I staid, about four Days after I came to *England*.

*L. C. J.* Had you any Discourse with any Body after you came hither, that you had left *Mr. Oates* behind you at *St. Omers*?

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*Hilsley*. Yes, I told some Persons, particularly *Mr. Osburn*, that I left an *English* Parson there, who went by the Name of *Sampson Lucy*; for *Oates* sometimes went by that Name in the College, but he had three or four Names: He was call'd *Titus Ambrosius* sometimes.

*Oates*. I desire to ask that Gentleman, What Religion he is of, and where he Lives?

*Hilsley*. I am a Roman Catholick, and live in *London*: I am of the *Inner-Temple*.

*Oates*. When did he go to *St. Omers*? And how long did he stay there?

*Hilsley*. It was about the Year 1672. that I went first, and I was there about six Years.

*Oates*. I would know what was his Employment there?

*Hilsley*. I know not of any particular Employment I had, more than the rest.

*L. C. J.* You must not ask any insnaring Questions, that may subject him to a Penalty.

*Oates*. Pray ask him, my Lord, When I came to *St. Omers*?

*Hilsley*. I think he came to *St. Omers*, the latter end of *November*, or the beginning of *December*, 1677.

*Oates*. Were they not Priests and Jesuits that Govern'd that House?

*L. C. J.* He is not bound to answer such a Question.

*Oates*. I would know whether they are not set on by their Superiours to do this?

*L. C. J.* That is not a fair Question neither.

*Oates*. Give me leave to make my Defence, my Lord, I beseech you.

No Question to be ask'd a Witness, where the Answer may subject him to a Penalty.

*L. C. J.* Ay, in God's Name; but pray make it in a regular and becoming Way. I know no Privilege you have more than other People, to use Witnesses as you do.

*Oates.* My Lord, I am hardly dealt with.

*L. C. J.* I care not what you look upon your self to be; ask fair Questions, and keep within Bounds, and you shall be heard as well as any of the King's Subjects: But if you will ask Questions that are Impertinent, Extravagant, or Ensnaring, we must correct you, and keep you within proper Limits.

*Oates.* Then, I ask, if he was not a Witness at the Tryal of the five Jesuits, and *Langborn's* Tryal?

*Hilfley.* I was so, Sir.

*Oates.* Ask him what Credit he receiv'd at these Tryals?

*L. C. J.* No indeed: It is not a fair Question.

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*Oates.* I would know what induces him to come here as a Witness now? When it appears he comes to give an Evidence he gave six Years ago, and was not believ'd.

*Hilfley.* My Lord, I am subpoena'd:

Any one may  
be an Evi-  
dence, tho' not  
Subpoen'd.

*L. C. J.* But if a Man will come without a Subpoena, it is no Objection to his Testimony.

*Oates.* Is he to have any Reward for his Evidence?

*Hilfley.* None, that I know of.

*Just. Withins.* He is not paid for his Evidence, Mr. *Oates.*

*Oates.* If he be, or be not, I cannot tell; nor do I know who ever was paid for it; but, my Lord, be pleas'd to ask him if he never heard of any Consult of the Jesuits in *England*, in *April*, 78.

*Hilfley.* I did hear, among the Students of the College, of a Consult of the Fathers, in *April*, 78. But it was only a Triennial Congregation, as usual once in three Years, about the ordinary Affairs of the Society.

*Oates.* He pretends to tell when I came to the College; I desire to know what time he saw me there, and how often?

*Hilfley.*

*Bur*  
*Stile,*

*Hilsley.* Generally every Day, Mr. *Oates* : You and I went to School in the same Place ; I don't know whether you were ever absent a Day.

*Att. Gen.* And he swears particularly to the very Time he came over, which was *April* the 14th, *Old Stile*.

Then Mr. *John Dorrel* was Sworn.

*Dorrel* depos'd, That in *April*, 1678. one Mr. *Osborn* was with him, and the Deponent's Mother laughing at his Religion, and telling him some ridiculous Stories ; he reply'd, There were a great many in the Religion of the Church of *England*, bred so Ignorant, that they were forc'd to be sent to the Colleges abroad ; even some of the Clergy, particularly one *Sampson Lucy*, alias *Oates*, that was at that Time a Scholar at *St. Omers*, as he was assur'd by a Gentleman lately come from thence.

*Oates.* Were you never at *St. Omers* a Student ?

*Dorrel.* I was there, but before your time.

*Oates.* What Religion are you of ?

*Dorrel.* I am a Papist now.

*Oates.* I desire the Court would take Notice, he owns that he was reconcil'd to the Church of *Rome*.

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*Dorrel.* I went over a Child of Twelve or Thirteen Years Old, and so was bred in that Perswasion.

*L. C. J.* Well, We all observe what he says.

Mr. *Osborn* was Sworn.

He depos'd, that he went out of Town the 30th of *April*, the Year before the pretended Plot was discover'd by Mr. *Oates* ; and that two or three Days before, he met with Mr. *Hilsley*, and enquiring about the Affairs at *St. Omers*, he told him of a Minister of the Church of *England* that was come thither to be a Student ; who went by the Name of *Sampson Lucy*, but his right Name was *Oates*. That he ask'd Mr. *Hilsley* if he intended to be of that Order ; and he answer'd, he would not be admitted for his Irregular and Childish Behaviour. And that he left him in the College.

Mr. *Burnaby* was Sworn.

*Burnaby* depos'd, That the 18th of *April*, *Old Stile*, in the Year 78. he met with Mr. *Hilsley* be-

*Burnaby* depos'd  
that he found  
*Oates* at *St. Omers* the 21st  
of *April*, 78.  
and that he  
continued  
there till June

tween *Cittenburn* and *Canterbury*; that he afterwards pursued his Journey to *St. Omers*, where he arriv'd the 21st of *April*, being the 1st of *May*, *N. S.* That the next Day, being the 2d of *May*, *Mr. Oates* came into his Company in the Garden there, as he did also the 3d of *May*. That on the 5th of *May*, he saw him in the Rhetorick School at *St. Omers*, and in the Garden; that he saw him also the 8th of *May*, *N. S.* which is the 28th of *April*, *O. S.* And that he was satisfied he was there from the 2d of *May*, being the Day after the Deponent came thither, to the 20th of *June*, or thereabouts, when this Deponent went away.

*Oates*. I desire he may give an Account what Religion he is of?

*Burnaby*. I am a Roman Catholick.

*Oates*. I desire to know if he be not of the Order of Jesuits?

*L. C. J.* That I will not ask him: The Answer may subject him to a Penalty.

*Oates*. It is hard that Jesuits should be admitted as Witnesses in such a Cause against me; but I would ask him, if he did not appear as a Witness at the Tryal of the five Jesuits?

*Burnaby*. I neither appear'd there, or was summon'd to appear.

*Oates*. Pray, my Lord, ask him what Reward he is to have for giving this Evidence?

*Burnaby*. None, that I know of.

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*Oates*. I would ask him what Name he went by at *St. Omers*? And if he did not know of a Consult to be held in *London*, in *April* 78?

*Burnaby*. I went by the Name of *Blunt* at *St. Omers*, and you by the Name of *Sampson Lucy*; but as to the Consult, I never knew or heard any thing of it.

Mr. Pool was Sworn.

*Sol. Gen.* Did you know Mr. *Burnaby* at *St. Omers*, and remember what Time he came thither?

*Pool*. I knew Mr. *Burnaby* at *St. Omers*, but do not remember what Time he came thither.

*Att. Gen.* When did you come from *St. Omers*?

*Pool*. The 25th of *April*, *O. S.* in the Year 78. which is the 5th of *May*, *N. S.*

Att:

Pool deposes  
he left Oates  
at St. Omers  
the 25th of  
April, 78.



*Att. Gen.* Did you know Mr. *Oates* there?

*Pool.* Yes, he was at *St. Omers* when I was, and when I came away, I left him there. The Death of my Brother occasion'd my coming over; and I remember I came away upon the *Thursday* Morning, and came to *London* the *Sunday* following: And I saw Mr. *Oates* the very Morning I came away, and two or three Days before that, particularly the 1st and 2d of *May*, *N. S.*

*Sol. Gen.* How long did you know Mr. *Oates* there? You were of the House.

*Pool.* I knew him from the *Christmas* before I came away. I was a Student there; I do not remember he was absent one Day, and if he had, Notice would have been taken of it.

*Oates.* I desire he may be ask'd what Religion he is of; and if he were not a Witness at the Tryals of the five Jesuits, and *Langhorn*.

*Pool.* I am a Roman Catholick, but never was an Evidence before in my Life.

*Oates.* Pray ask him, if he was not admitted into the Sodality of the Virgin *Mary*?

*L. C. J.* Prove what you can, but you shall ask him no intangling Questions.

*Oates.* Then I desire he may be ask'd what Reward he is to have for swearing in this Cause?

*Pool.* I do not know that I am so much as to have my Charges,

*Oates.* Did not he know of a Consult of Jesuits, in *April* 78.

*Pool.* I know of no particular Consult, but have heard something of a General Triennial Congregation,

*Oates.* Does he know how much before *Christmas* I came to *St. Omers*?

*Pool.* As near as I can remember, it was the latter end of *November*, 77. Page 391.

*Oates.* I desire to know, if he saw me every Day at *St. Omers*, at Dinner?

*Pool.* I cannot say he was ever absent one Day: Never three Days, I think, I may affirm, unless when he was in the Infirmary.

*Oates.* Pray ask him by what Name he went in the College?

## The T R Y A L of

*Pool*, I went by the Name of *Killingbeck*, and you by the Name of *Sampson Lucy*.

Mr. *Henry Thornton* was Sworn.

*Thornton* deposes that *Oates* came to *St. Omers*, *Christmas* 77, and continued constantly there till *Midsummer*, 78.

He depos'd, That Mr. *Oates* came to *St. Omers* about *Christmas*, 77. and staid there till *St. John Baptist's Eve*, *N. S.* in the Year 78.

*Sol. Gen.* Did you see him there all the while?

*Thornton*. Yes, I saw him every Day, I believe, in the Refectory at Dinner Time, and at Night in the Dormitory: I lay over against him, and I saw him, particularly on the Day of Mr. *Hilsey's* Departure, on the 24th of *April N. S.* And I saw him the 1st of *May N. S.* on Mr. *Burnaby's* coming to the College; and I remember him at a Play that was exhibited by my School-Fellows the 2d of *May*, by this particular Circumstance, That there was a Scuffle between him and another, about a Place to see the Play. And I remember I saw him the 5th of *May, N. S.* when Mr. *Pool* came away. Mr. *Oates* was Reader in the Sodality, and to my knowledge he did not misse once, from the 24th of *April, N. S.* to the 24th of *May, N. S.* but read some piece of Divinity there every *Sunday* and *Holiday* in that Time, as is usual,

*Oates*, I desire he may be ask'd, What Religion he is of? Where he lives? And when he came from *St. Omers*? And who was Rector of that College?

*Thornton*. I am a Roman Catholick, and of *Northumberland*: I came from *St. Omers* about two Years after Mr. *Oates* went away. One Mr. *Richard Ashby* was Rector of that College then.

*Oates*. Pray ask him what School he was in there?

*Thornton*. I was in *Syntax*.

*Oates*. Why is he so precise in point of Time, as to *April* and *May*, and does not give any Account of any other Time, any more than the other Witnesses?

*Thornton*. I remember him the *March* before, by his reading a ridiculous Book in the Sodality; and he was remarkable in the House, by Twenty ridiculous Passages.

*Oates*. I do acknowledge I did, in *March*, read a pleasant Book, call'd *The Contempt of the Clergy*; and

and I own I was there in *June*, but that was after I return'd from *England*.

*Thornton*. He never left the College, from the Time of his coming thither first, till *Midsummer* Eve; only about the latter end of *January*, he was a Day or two at *Watton*, which is not a League out of Town: And I remember him, particularly, to be there in *February*, about *Shrovetide*. Mr. *Oates* was in the Rhetorick School, and I was in the *Syn-tax*. He went there by reason of his Age; or he might have gone elsewhere with us who were of a lower Form, for any great Store of Learning he had.

*Oates*. I would ask him, Whether he did not hear of a Consult of Jesuits in *England*, in *April*, 78.

*Thornton*. I did hear in the House, of a Triennial Congregation; and have read, That it is the Custom of that Society to have such a Meeting once in three Years. I have been told, they met, to send a Procurator to *Rome*, and for managing their other Affairs that concern'd the Society.

Mr. *Conway* Sworn.

He deposed, That he was a Scholar at *St. Omers*, that *Oates* came thither in *December*, 1677. before *Christmas*; and did not go away till about the 20th of *June*, 1678. And that he lay out of the College but one Night, during that Time, which was in *January*.

*Conway* deposes to the same Effect.

*Sol. Gen.* Can you tell any particular Passages that make you remember this?

*Conway*. I remember Mr. *Hilsley's* Departure on the 24th of *April*, *N. S.* and soon after Mr. *Burnaby* came; and he told me he met Mr. *Hilsley* upon the Way: And the next Day, I saw Mr. *Oates* and Mr. *Burnaby* Walking very familiarly together, which I took particular Notice of, Mr. *Burnaby* being but newly come.

*Sol. Gen.* Do you remember him in *March* before?

*Conway*. I remember him to be there on the *Thursday* in *Mid-Lent*: The Scholars had a particular Recreation, which they call *Sawing the Witch*; and Mr. *Oates* was among us, and I was one that broke a Pan about his Head.

Page 393.

*Sol.*

## The T R Y A L of

*Sol. Gen.* Did *Oates* use to read in the Sodality?

*Conway.* There was another chosen to read, but Mr. *Oates* took the Book, and did read. He never mis'd any *Sunday* or *Holiday*, from a little after *Easter*, till he went away.

*Sol. Gen.* Did you observe him at Dinner constantly?

*Conway.* Yes, He sat at a little Table in the Hall, by himself; for he pretended, being a Man in Years, he could not diet as the rest of the young Students did; and therefore had liberty to sit at a little Table by himself, next to the Table of the Fathers; to which all the Students make their Reverence before they sit down. He chang'd his Table once, I took Notice, and sat on the other Side of the Refectory: That was a little after *Easter*.

*Oates.* Pray what Religion is he of? Where does he Live? And what Name did he go by at *St. Omers*?

*Conway.* I am a Roman Catholick, of *Flintshire*, and went by the Name of *William Parry* at *St. Omers*.

*Oates.* Ask him what Name he went by, when he gave Evidence at the Tryal of the five Jesuits?

*Conway.* By the Name of *Parry*.

*Oates.* I desire the Court would observe, he Represented himself by a feign'd Name in a Court of Record. And pray ask him, If he heard of a Consult of Jesuits in *England*, in *April 1678*?

*Conway.* I heard of it among the Scholars; and was told so when some of the Fathers went over.--- They have a Consultation ordinarily once in three Years; and, they said, this was in order to choose a Procurator to send to *Rome*, and give an Account of the Province.

*Oates.* Pray ask him how long he liv'd at *St. Omers*? And what Reward he is to have for giving his Evidence?

*Conway.* I liv'd five Years at *St. Omers*, and am not to have any Reward, but what I expect from God.

Then Mr. *Haggerstone* was call'd.

He deposed, that he was in the same Form with Mr. *Oates*, at *St. Omers*; and that he remembered

*Oates*



*Oates* to be there on the 25th of *April*, 78. by this particular Token, namely, his asking after *Mr. Hilsley*, their Schoolfellow, who was then gone from the College. That he remiembred *Oates* all *March* and *April*, and believ'd he was not absent above one Night in *February*, which was when he went to *Watton*. That he came first in *December*, near *Christmas*, and went away about the latter end of *June*. That he particularly remembred his being there the 29th of *April*, *N. S.* For he told him that Day, That there was a Collection made for a craving *Englishman* who had been there to give Alms; but he would give nothing, because he had been Cheated by such a one, of some Pieces of Eight in *Spain*. That on the 2d of *May*, he was present at an Action of the Scholars; and that about the 5th of *May*, he heard him Preach a pleasant Sermon, wherein he said, *The late King Charles halted between two Opinions; and that a Stream of Popery went between his Legs.* And he had some pretty Reflections about *Toby's Dog wagging his Tail*.

Then *Mr. Oates* ask'd him, What Religion he was of? Where he Liv'd? How long he was with him at *St. Omers*? And how long the Deponent was there himself?

*Haggerstone* said, He was a Roman Catholick, and Son to *Sir Thomas Haggerstone*, of *Northumberland*: That *Oates* was with him about half a Year at *St. Omers*, and that the Deponent spent seven Years there.

*Oates*. Pray ask him, If he knows any Thing of the Consult in *England*, in 78?

*Haggerstone*. Yes, My Lord, I saw two of the Fathers go from *St. Omers* to the Congregation, and I was at *St. Omers* at their Return; but I frequented *Dr. Oates's* Company all the Time they were gone, and he remained in the College. The Fathers that went, were *Mr. Williams*, and *Mr. Marsh*; and when they returned, *Oates* ask'd me, If they had been at the Consult? And this I am sure of, that he was never missing all the time, for I sat on the same Bench with him.

*Oates.*

*Oates.* I desire to know of him, the Occasion of Mr. *Hilsey's* coming away.

*Haggerstone.* I do know it: It was upon some unhandsome Account, but I must not blemish any Gentleman.

Mr. *Beefton* was Sworn.

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He depos'd, that Mr. *Oates* came to St. *Omers* in *December*, 77. and staid there till the latter end of *June*, 78. That the Deponent was chosen Reader of the Sodality, about the 25th of *April*, for a Fortnight, and Mr. *Oates* was admitted to read in his Room; provided, that if Mr. *Oates* was wanting, he should read again. But the Deponent never supplid the Place, and therefore he was sure *Oates* must continue there all that time; for if he had been out, the Deponent would have been call'd upon to read. And that he remembred, particularly, he saw him the 2d of *May*, when their School exhibited an Action in the Hall.

*Sol. Gen.* Was Mr. *Oates* such a remarkable Man, that he must be mis'd if he was absent?

*Beefton.* He was very particular, both for his Age, and that he had a particular Table to eat at; and I remember I saw him often with Mr. *Burnaby*, when he came first, especially the 2d, 3d, and 4th of *May*; and I took notice of the Friendship between them, and I thought it something strange between two Persons, that, I suppos'd, never saw one another before.

*Oates.* Pray ask if he be not a Roman Catholick? And how long he was at St. *Omers*.

*Beefton.* I am a Roman Catholick, and spent about seven Years at St. *Omers*.

*Oates.* What does he know of the Consult?

*Beefton.* I heard a Rumour of such a Thing; but it was no more than us'd to be once in three Years.

*Oates.* He says he saw me every Day: Ask him if there be not an Eight Days Exercise, when we are separated from all Company?

*Beefton.* Yes; And I remember he was once in that Eight Days Exercise; but I saw him Walk in the Garden several Times, during the Time.

Then

Then *Oates* demanded, as he did of the other Witnesses, Whether he were not an Evidence at the Tryal of the five Jesuits? How he came to be an Evidence here? What Reward he had? And what Name he went by at *St. Omers*?

*Beeston*. I was not at the Tryal of the five Jesuits; I was subpoena'd to be a Witness, and have no Reward for my Testimony; and I went by the Name of *Beeston* at *St. Omers*, as I do here.

*Clement Smith* was Sworn.

He depos'd, that *Mr. Oates* came to *St. Omers* a little before *Christmas*, 77. and staid there till *June*, 78. and that he was not absent one Day, except when he went to *Watton*, in *January*. That the Deponent din'd with him, eat with him in the Afternoon, and eat his Breakfast and Supper with him in the Refectory, during all that Time, except when one of them was absent in the Infirmary. That the 21st of *April*, *N. S.* the Deponent fell Sick, and was in the Infirmary till the 7th of *May*; and *Mr. Oates* visited him every Day, or every other Day. On the 2d of *May* he saw him and *Mr. Burnaby* together, and the Day when *Mr. Pool* went away, which was about the 5th of *May*, *Oates* came to the Deponent, and told him of it; as he did of *Mr. Hilsley's* going away, the 24th of *April*, *N. S.* And that two or three Days after *Mr. Hilsley* went away, *Mr. Oates* came into the Infirmary himself, and remain'd there two or three Days.

*L. C. J.* Are you sure he was not out of the College, so long as to go to *London* and back again?

*Smith*. I am sure he could not without being mis'd, and he was never mis'd.

*Oates*. I desire to know what Religion he is of? And how long he liv'd at *St. Omers*?

*Smith*. I am a Roman Catholick; I was about six Years at *St. Omers*, and came away a little after *Mr. Oates*.

*Oates*. He is a Jesuit, my Lord, and that all the World knows: Pray ask him if he did not hear of the Consult? And what Jesuits went from *St. Omers* to it.

*Smith*.

## The T R T A L of

*Smith.* I heard there was to be a Congregation; and know that *Mr. Marsh*, and *Mr. Williams*, two of the Fathers, pass'd by *St. Omers*; they us'd to say in the College, it was an ordinary Thing to have such a Congregation once in three Years.

*Edward Price* was Sworn.

He depos'd, that *Oates* came to *St. Omers* in *December*, 77. and remain'd there till *June*, 78. and he did not remember he was absent at any time, unless one Night in *January*, that he went to *Watson*. That he remembr'd, particularly, *Mr. Hilsey* left *St. Omers* the 24th of *April*, *N. S.* and that the next Day he was told *Oates* went into the Infirmary. That on *Wednesday*, the 27th of *April*, he saw *Oates* going to Mass; and the 1st of *May* he saw him with *Mr. Burnaby*, who came to *St. Omers* that Day. That the 2d of *May*, *N. S.* he saw him with *Mr. Burnaby* again. That the 3d of *May*, being the Invention of the Holy Cross, he remembr'd he saw him at the Table. That the 5th of *May*, he saw him take his leave of *Mr. Pool*: That the 10th or 11th of *May*, he saw him at an Action, and that *Mr. Watson* had a Quarrel with him, and beat him. That not only his having a particular Table, but his absurd Behaviour, and frequent Quarrels with the Students, rendred him so remarkable, that he could not but be miss'd if he was absent.

*Oates* ask'd, What Religion he was of? How long he was at *St. Omers*? Whether he did hear of the Consult? If he was not a Witness at the Tryal of the five Jesuits? And what Name he went by at *St. Omers*?

*Price* answer'd, That he was a Roman Catholic; that he was about six Years at *St. Omers*; that he heard there was to be a Congregation, and that *Mr. Marsh* and *Mr. Williams* went thither; but it was no more than their usual Triennial Meeting. That he was not at the Tryal of the five Jesuits, and that he went by his own Name at *St. Omers*, which was *Edward Price*.

*James Doddington* was Sworn.

He depos'd, that *Oates* came to *St. Omers* about *Christmas*, 77. and went away the latter end of *June*, 78. That he remembr'd, particularly, he

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saw him in the Infirmary, two or three Days after Mr. *Hilsey* went away, which was a little after *Easter*, that the 1st of *May* he saw *Oates* with Mr. *Burnaby*, and so for Ten or Twelve Days successively; that he remembred his Reading in the Sodality about *Shrovetide*; and that he did not remember he was ever absent except one Night in *January*, when he went to *Watton*; that he was so remarkable for his Stories and ridiculous Actions, and Quarrelling with every body of the College; that if he had been out of the College so long as to go to *London* and back again, he must have been mis'd.

*Oates* ask'd, What Religion he was of? What Name he went by at *St. Omers*? and How long he was Resident there?

*Doddington* said he was a Roman Catholick, that he went by the Name of *Hollis* at *St. Omers*, and was Resident there about five Years.

*Oates* ask'd what was the Occasion of his coming over to *England* first? Page 398.

*Doddington* answer'd, to see his Friends. And, Mr. *Oates* observ'd, that at the Tryal of the five Jesuits, he pretended he came over at the King's Proclamation.

*Oates* ask'd, Whether he heard of the Consult, in *April*, 78?

*Doddington* said, He heard of it, and saw *Whitebread*, the Provincial, at his Return from *England*.

Mr. *William Gerrard* was Sworn.

He depos'd, That *Oates* came to *St. Omers* in 77, and went away in *June* 78. That he remembred his being there the 2d of *May* at a Play, and that the 26th of *May* he and *Oates* were confirm'd.

*Sol. Gen.* Between the 2d and 26th of *May*, was he absent at any Time from *St. Omers*?

Mr. *Gerrard*. I don't remember to have mis'd him during that Time, and I used to pass by his Table at Meal-Times, and make a Bow to the Fathers, before I sat down.

*Oates*. How came he to know I went away in *June*.

*Gerrard*.

*Gerrard.* We mis'd him in his Place, and then 'twas discours'd of all over the Town, that when the Provincial came he was to be dismiss'd.

*Oates* desir'd to know, What Religion he was of? What Name he went by at *St. Omers*? How long he was there? Whether he was a Witness at the Five Jesuits Tryal? And, Whether he did not hear of the Consult in *April*, 78.

*Gerrard* answer'd, He was a Roman Catholick; that he went by the Name of *William Clovel* at *St. Omers*; that he came thither about Two Years before *Mr. Oates*, and went away about Two Years after him; and that he was not a Witness at the Tryal of the Five Jesuits: He said, It was a Custom for the Fathers of that Order, to have a Congregation once in Three Years, about the Affairs of the Society, to which no Person was admitted, who had not been Eighteen Years a Jesuit; and that *Oates* not being so much as a Novice, could not be present at it.

*Oates.* Pray, my Lord, Ask him if he were of they Sodality.

*Gerrard.* Yes, I was.

*Oates.* Ask him, What Oaths are taken before they are admitted into the Sodality.

*L. C. J.* No, I will not; It may subject him to a Penalty.

*Oates.* May not I ask it, to shew what Kind of Men these are?

Then my Lord *Gerrard*, of *Bromley*, was call'd.

*Att.Gen.* My Lord, Do you remember *Mr. Oates* at *St. Omers* in 77, and 78.

*Lord Gerrard.* He was disguis'd in a blacker Wig; but I remember his Face very well, and know him by the Tone of his Voice, which was very remarkable.

*L. C. J.* Is my Lord *Gerrard* Sworn?

*Lord Gerrard.* No, my Lord.

Then his Lordship was order'd to be Sworn, And he depos'd, That *Oates* came to *St. Omers* in *December* 77. and that he never heard he was absent or mis'd till *June* 78. and that he remembered him, particularly the 25th of *March*, when *Mr. Oates* desir'd to be appointed Reader to the Sodality,

Lord *Gerrard's*  
Evidence of  
*Oates's* being  
Resident in  
the College at  
*St. Omers* from  
*December* 77,  
to *June* 78.

Sodality, and that he was constant at his Reading on *Sundays* and *Holidays* for Five or Six Weeks; That he remembred his being confirm'd by a Catholick Bishop who was there, on *St. Austin's Day*, being the 26th of *May*, *N. S.* that when the News of the Plot being discover'd came to *St. Omers*, it was wonder'd at by all the Scholars, how *Oates* could be so impudent, to pretend he was at such a Consult the 24th of *April* 78. when all the College saw him every Day in *April* and *May* at *St. Omers*, as much as a Man could be seen in a Family, and that no Scholar goes away, or comes to the College, but it is the common News of the House.

*Oates*. I do not remember his Lordship there.

*Lord Gerrard*. I do very well remember the Man by particular Remarks.

*Oates*. Yes, my Lord, You have Occasion to remember me, and so have your whole Party. But pray, What Name did his Lordship go by at *St. Omers*? and what Religion it he of?

*Lord Gerrard*. I went by the Name of *Clovel*; and am not asham'd to own I am a Roman Catholick.

*Oates*. I would ask this Noble Lord, If he was not a Witness at the Tryal of the Five Jesuits? And, Whether he did not know of a Consult in 78? Page 400.

*Lord Gerrard*. I never was a Witness before; nor did I ever hear of a Consult, till he had pretended to discover such a Thing.

*Mr. Samuel Morgan* was Sworn.

He depos'd, That *Mr. Oates* came to *St. Omers* Fourteen or Fifteen Days before *Christmas* 77, and went away again in *June* 78, and he did not remember that he was absent during that Time, except one Night that he was at *Watton*; that he remembers particularly, he was in the College when *Mr. Hilsley* went away, and when *Mr. Burnaby* came, and that he was there also when *Mr. Pool* went away.

*Oates*. What Religion is he of?

*Morgan*. I was reconcil'd to the Church of *England* about Five Years since.

*Mr. Morgan*, a Benefic'd Clergyman of the Church of *England*, deposes, That *Oates* came to *St. Omers* before *Christmas* 77, and resided constantly there till *June* 78.

*Oates.* What induc'd him to be Reconcil'd to the Church of *England*?

*L. C. J.* Is he to give an Account of his Faith here?

*Just. Withins.* Mr. *Oates* is angry when the Witnesses are Papists, and when they are Protestants too.

*Sol. Gen.* Do you remember the 24th of *April*, *Old Stile*?

*Morgan.* Yes, I do very well; for having the Tryal of *Ireland* brought over to us, as soon as it was Printed, and it being mention'd that Mr. *Oates* had depos'd, that the 24th of *April*, 78. he was at a Consult of *Jesuits* at the *White Horse Tavern*, where they resolv'd to Kill the King, &c. Having it then fresh in my Memory, I found he was at *St. Omers* that very Day, by a particular Circumstance; for I was playing at Ball that Day, and struck it over into a Court into which I could not get over; but saw Mr. *Oates*, and borrow'd his Key, and so went in, and there pass'd Words of Friendship between us.

*Oates.* I desire he will let his Orders be seen.

*L. C. J.* No, He shall not; What ado is here with your impertinent Questions!

*Mr. Gen.* My Lord, Mr. *Oates* may see them, if he pleases; he is a Benefic'd Clergy-man of the Church of *England*.

*L. C. J.* If he means those Orders let him see them. (Then they were shewn to Mr. *Oates*.)

*Oates.* What Name did he go by at *St. Omers*?

*Morgan.* By the Name of *Morgan*.

Mr. *Arundel* was Sworn.

He depos'd, That Mr. *Oates* came to *St. Omers* in *December* 77, and went away about *June* 78; that he saw him confirm'd on *St. Austin's Day*, the 26th of *May*, *N. S.* that he remembers particularly he saw Mr. *Oates* there when Mr. *Hilsley* went away, and when Mr. *Burnaby* came, and that he was there when Mr. *Pool* went away; and that the 11th of *May*, *N. S.* there was an Action in the College, and, to the best of his Remembrance, Mr. *Oates* was there then?

*Oates.* I would ask him, What Religion he is of? By what Name he went at *St. Omers*? How long he was there? and if he were not of the Sodality?

*Arundel.*



*Arundel.* I am a Papist, I went by the Name of *Spencer* there, and was of the Sodality, and remember him Reader there; I was in the College about seven Years, and went from thence to *Paris*.

*Oates.* Did he hear of a Consult of Jesuits?

*Arundel.* I heard in the College, of a Congregation, but it was no more than is usual once in three Years.

*Mr. Christopher Turberville* was Sworn.

He depos'd, That *Mr. Oates* came to *St. Omers* before *Christmas*, 77, and went away in *June* 78; that he remembred him there particularly the 4th, 5th and 6th of *May*, for *Mr. Pool* going away about that Time, and the Deponent remov'd into his Lodging, and he saw *Mr. Oates* in the Chamber; that he remembred *Mr. Oates's* Reading on *Sundays* and *Holidays* in the College, and that he began to Read the latter End of *March* or the Beginning of *April*, and he was morally sure he left off the *Sunday* before he went away, which was the 23d of *June*.

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*Mr. Oates* desir'd to ask him, What Name he went by? What Religion he was of? How long he was at *St. Omers*? And, If he went from thence directly to *England*?

He answer'd, That he went by the Name of *Farmer*, and was a Roman Catholick; that he stay'd at *St. Omers* about Seven Years, and then went into *Italy*.

*Oates.* Ask him, If he was a Witness on behalf of the Five Jesuits? If he is to have any Reward for giving his Evidence? And, If he knew of the Consult of Jesuits in 78?

*Turberville.* I was not a Witness at the Jesuits Tryal, nor am to have any Reward for giving my Testimony; I heard there was a Congregation, and some of the Fathers pass'd by the College to it, and lodg'd there as they came back.

*Oates.* How came he to be a Witness in this Cause?

*Turberville.* I was *Subpœna'd*.

*Mr. Anthony Turberville* was Sworn.

He depos'd, That *Oates* came to *St. Omers* in the Year 77, and that *Mr. Thornton* and the Deponent Breakfasted with him the Day he went away,

which was the latter End of *June*, 78; and that he was never absent before, unless one Night in *January*: that his Sitting at a distinct Table, and his many ridiculous Actions and Jest, made him so remarkable, that it was impossible he could be absent and not be miss'd; that he was positive Mr. *Oates* was in the College when Mr. *Hilsey* went away, and several Days after, and that he was there when Mr. *Burnaby* came thither: that the Deponent was Six Years in the College, that he was a Roman Catholick, and went by the Name of *Farmer* there.

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*Oates*. My Lord, I find my Defence is under a very great Prejudice.

*L. C. J.* What! Because we will not let you ask impertinent Questions, or such as may subject the Witnesses to a Penalty?

*Oates* says he was prosecuted only to serve a Turn.

*Oates*. No, my Lord, It is not fit they should; for there's a Turn to be serv'd.

*L. C. J.* Ay, And a good Turn too, if these Witnesses swear true: 'Tis to bring Truth to Light, and perjur'd Villains to condign Punishment.

*Oates*. Good my Lord, be pleas'd to hear me, I would vindicate my self, I meant it not of the Court.

The Court resent it.

*L. C. J.* You had need vindicate your self! Don't think we sit here to let you asperse the Justice of the Court and of the Nation; as if the Judges sat here to serve a Turn.

*Oates*. I say these Men come here to serve a Turn, but did not mean to asperse the Court.

*L. C. J.* Behave your self as you ought, and you shall be heard with all the Fairness imaginable.

*Oates*. I desire to observe, that these are the same Witnesses that appear'd at the *Old Baily*, and they were not believ'd then.

*Att. Gen.* No, they are other Men, but 'tis true they bear the same Testimony.

Mr. *Clavering* was Sworn.

*Att. Gen.* Were you at *St. Omers* with Mr. *Oates*? and When?

*Clavering*. I came to *St. Omers* the 10th of *December* 77, and Mr. *Oates* told me he came thither that

that Day too; I liv'd there all the Time that he was there; which was till the Middle of Summer, and I don't remember that ever he was absent but once at *Watton*. He was there when Mr. *Burnaby* went away, and when Mr. *Pool* went away, and I remember his being there at the Time of the Congregation, for there came a Gentleman who ask'd Charity of the Students, and I made the Collection: The Gentleman ask'd if there was not a Student that had been in *Spain*? We told him there was, and upon describing *Oates* he knew him: I went and told *Oates* there was one that knew him, but he refus'd to come near him; and I remember it was the Time of the Congregation, because it was given as a Reason why the Gentleman got no more at *Watton*, That the Fathers were gone to the Congregation in *England*: And I remember once in Conversation Mr. *Oates* ask'd me, If I knew what Business the Congregation did? and I reply'd, I know not what they did, but I heard many Times they stay'd an Hour or two and had done, when they had chosen their Procurator.

*Oates*. I desire to know, What Religion he is of? and, Why he did not give this Evidence at the *Jesuits Tryal*?

*Clavering*. I am a Roman Catholick, and was in *Germany* at that Tryal.

Mr. *John Copley* was Sworn.

He depos'd, That he was at *St. Omers* all the Time that *Oates* was there; that *Oates* came a little before *Christmas* 77, and went away in *June* 78, and he was sure he was not absent during that Time, except one Night at *Watton*.

*Oates*. Pray ask him, What Religion he is of?

*Copley*. I am a Roman Catholick.

Mr. *Cook* was Sworn.

He depos'd, That he was positive that Mr. *Oates* was at *St. Omers* the 30th of *April*, *N. S.* for there was a Procession that Day from the Sodality to the Church, and he saw him go among the rest at the latter End, among the Rhetoricians.

*Oates*. In what Place did you serve in the House?

Mr. *Cook*. I was a Taylor.

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Mr. Wright was Sworn.

He depos'd, That Mr. Oates came to St. Omers in Winter, in the Year 77, and went away the Summer following.

L. C. J. He says nothing to the Purpose.

Sol. Gen. My Lord, We leave it here.

L. C. J. What say you to it, Mr. Oates? You are to make your Defence now.

Mr. Oates enters upon his Defence, and excepts to the Form of the the Indictment again.

Then Mr. Oates renew'd his Objection to the Indictment, that the Assignment of the Perjury did not pursue the Oath as it was set forth; for in the one Place the Word was *Signand'*, and in the other it was *Signat'*; and if it were *Signat'* in the Evidence that was given, it ought to be *Signat'* in the Perjury assign'd: The Court told him again, that they were then upon the Fact, and that this Objection would be sav'd to him if he were convicted, but it was not proper now. Besides, he should remember there were two Perjuries assign'd, the one upon the first Part of his Oath, viz. That he was present at a Consult the 24th of April 78, *ubi re vera*, he was not there; and if he were forsworn in that Point, it would easily be believ'd he was forsworn in the other Point, viz. That he did not carry the Resolution from Chamber to Chamber, &c.

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In the next Place, he desir'd the Opinion of the Court, Whether the Evidence did prove the Words he was said to swear, as they were laid in the Indictment.

The Court give their Opinion, That the Words laid in the Indictment were well prov'd. Oates insists, that no Averment ought to be receiv'd against the Records of Ireland's Conviction, &c. while they remain'd in Force.

The Court answer'd, They thought them fully prov'd, but that was a Point of Fact which the Jury were to try.

Then the Defendant produc'd a Copy of the Record of Ireland's Conviction; which was prov'd to be a true Copy by Mr. Percivile: And he desir'd to have Council assign'd him to argue this Point of Law, viz. Whether the Convictions and Attainders of Ireland and Whitebread, of a Treasonable Consult the 24th of April, 78, ought not to be taken as a Legal Proof of the Fact, so long as those Attainders remain'd in Force? And whether the Averment of that being false, ought to be receiv'd against those Records?

The



The Court answer'd, That tho' that remain'd a good Record, and unimpeachable still; yet it was lawful to say, the Verdict was obtain'd upon the Testimony of such a one who forswore himself, and for that particular Perjury the Offender might be prosecuted.

*Oates.* If your Lordship Rules that for Law, I will go on, and first I shall submit it to your Consideration, Why the Presentment and the finding this Bill for Perjury has been so long delay'd? since it appears that the same Witnesses were at the Tryal of the Five Jesuits, or might have been produc'd then; and I must observe, that my Case is very hard, seeing the Substance of my Testimony receiv'd such Credit, that the Jury were told upon bringing in their Verdict, "That all the Objections against the Evidence were then fully answered; That there was nothing that the Prisoners had been wanting in to object, which could be objected; and that the Thing was as clear as the Sun;" and yet after Six Years Time I must be call'd in Question for Perjury, in my Testimony of that Part of the Popish Plot with which the King and Kingdom, Four successive Parliaments, all the Judges of *England*, and Three Juries, were so well satisfied. The Evidence I gave, they industriously endeavour'd to falsify Six Years ago, by Sixteen St. Omers Youths, who were examin'd at *Whitebread's* and *Langhorn's* Tryals, in neither of which were they believ'd, because of their Religion and Education, and because their Instructors were Men of known Artifice; and if my Evidence were true then, it must needs be so still, for Truth is always the same; and I desire your Lordship and the Jury would observe, that tho' the King's Council are against me now, yet they are also against themselves, Mr. *Solicitor* was Council for the King at *Langhorn's* Tryal, and Sir *Robert Sawyer* at Sir *George Wakeman's*: And can it be suppos'd that it is the Love of publick Justice that is the Cause of this Attempt to falsify my Evidence, after so many Tryals in which it has been credited and confirmed? Can any thing tend more to subvert the Methods of Justice, and frighten

Complains of being prosecuted so long after Fact, and when the Judges and so many Parliaments had express'd themselves so well satisfied with his Evidence.

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Witnesses from discovering Conspiracies? Had the late King, His Peers, His Commons, and Judges, no Honour, no Justice or Understanding? Shall those Juries be said to have drawn the Innocent Blood of these Men upon their own Heads and the Nation? As, if I am Perjured, it must be Innocent Blood that was shed upon it.

*Court.* Neither Judges or Jury have any Share in that Blood: That is your own most certainly.

*Oates.* My Lord, If you please to give me Leave to proceed in my Evidence, I desire these Records of Conviction may be read, which are my first Proof of the Consult; and I shall then bring Witnesses, *Viva Voce*, to prove what I did swear at those Tryals, was true.

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*L. C. J.* The Question now is, not Whether there was a Consult, but whether you can prove your self to be here on the 24th of *April* 78? At which Time it is agreed on all Hands there was a Consult, as is usual once in three Years.

*Oates.* I shall not go about to prove that I was not then at *St. Omers*, but that I was then actually in *London*; but to introduce this, It will be necessary for me to read the Records of Conviction of *Whitebread* and *Ireland*.

Then the Record of *Ireland's* Conviction was read in *English*.

*Oates.* Now read *Whitebread's* Attainder; I will not trouble the Court with the whole Record.

*Clerk of the Crown.* *Thomas White* alias *Whitebread*, *William Harcourt* alias *Harrison*, *John Fenwick*, *John Gaven*, and *Anthony Turner*, were found Guilty of High Treason and Attainted, and Execution awarded against them upon that Attainder.

*Oates.* Now I shall prove, That at the Tryal of *Ireland*, I gave so satisfactory an Evidence against *Whitebread* and *Fenwick*, that my Lord Chief Justice *Scroggs* said, It might be sufficient to satisfy a private Conscience, tho' it was not a legal Proof, there being but one Witness.

To this *Mr. Blaney* was call'd,

He depos'd, That he had look'd upon his Notes, but could not find exactly the Words that *Mr.*

*Oates*

Oates repeated to him, but there was something to that Purpose.

Oates. Did not my Lord Chief Baron say to the Jaylor, *You must understand they are no Way acquitted; The Evidence is so full against them by Mr. Oates's Testimony, that there is no Reason to acquit them; It is as flat as by one Witness can be.*

Blaney. There is such a Passage in my Notes.

Oates. See what my Ld. Chief Justice Scroggs said in Summing up the Evidence against Ireland, viz. *When the Matter is so accompanied with so many other Circumstances which are material Things, and cannot be evaded or denied, it is impossible almost for any Man, either to make such a Story, or not to believe it when it is told.*

Blaney. I find such a Passage in my Notes.

Oates. And in Summing up the Evidence against Ireland, Pickering and Grove, Had he not this Expression, *You have done, Gentlemen, like very good Subjects, and very good Christians, and like very good Protestants, and now much good may their 30000 Masses do them.*

Blaney. There is such an Expression in my Notes.

Oates. Have you the Notes of *Whitebread's* Tryal?

Blaney. No, I have them not here.

Oates. Then I must desire the Printed Tryals may be read.

L. C. J. No, They are no Evidence.

Oates. Then give me Leave to mention what your Lordship said about your Satisfaction with the Evidence: You were then Recorder of London.

L. C. J. Ay, With all my Heart: And whatever I said I will own.

Oates. Will your Lordship please to be Sworn then?

L. C. J. No, There will be no Need for that; I will own any Thing I said then.

Oates. When your Lordship gave Judgment of Death upon the Five Jesuits and Langhorn, speaking of the Objections that had been made against the Evidence, you said, *Your several Crimes have*

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Printed Tryals no Evidence.

Oates observes, That my Ld. Chief Justice himself had express'd his Satisfaction as to the Truth of his Evidence.

been prov'd against you; you have been fully heard; and stand Convicted of those Crimes you have been Indicted for.

L. C. J. I believe I might speak to the same purpose.

Oates. And when the Jury brought in their Verdict against the five Jesuits, you said, *Gentlemen, There has been a long Evidence against the Prisoners, they were all Indicted, Arraign'd, and Try'd for High Treason, depending upon several Circumstances. They can none of them say the Court refused to hear any thing they could say for themselves; but upon a long Evidence, and a patient Hearing of the Defence they made, they are found Guilty; and for any thing appears to us, it is a just Verdict you have given.*

L. C. J. I might say something to that purpose, at that time; and no doubt, as the Case then stood, the Jury did find an unexceptionable Verdict.

Oates. And, my Lord, when you were Council for the King, in Colledge's Tryal at Oxford, addressing your self to the Jury, you had this Expression; *We come not here to trip up the Heels of the Popish Plot, by saying, that any of them who suffer'd for it, died contrary to Law.*

The Court answer it was not material to his Defence what was said by the Judges, of their Apprehensions at that time.

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L. C. J. Decieve not your self, all this you have insisted on hitherto, has not been to the Purpose, or is any sort of Evidence in this Case. What my Lord Chief Justice Scroggs said at any of those Tryals, or what I said, or any other Person who was Council or Judge upon the Bench; it was but our Opinion on the Fact, as it occur'd to our present Apprehensions, and is no Evidence or Binding to this Jury. And there is no doubt, but those Juries did believe the Evidence you gave then, or they would not have Convicted the Prisoners. I do not discommend you for insinuating these Things, as introductive and preparative to your Defence; but it is no Evidence one Way or other. We have, many times, in *Westminster-Hall*, Verdict against Verdict: And in these Cases, We give our Opinions according to the present Testimony that is before us.

Oates.



*Oates.* If then I prove, my Lord, that *Ireland* was engag'd in a Design against the late King's Life, and was a Priest and a Jesuit; Will not this be a Collateral Evidence to render me of Credit sufficient, and support my Testimony.

*L. C. J.* It may give some Credit to your Testimony, but is not of it self sufficient upon this Indictment. Nay, I will suppose there was a Consult of Jesuits in the *Strand*, the 24th of *April* 78. Where these, you say, were all present, and did come to the Resolution you mention; and yet you will not be Innocent, if you were not there too, as you swear. Therefore give us some Testimony to satisfy us you were there, if you would set all right again. Call two or three Witnesses to prove you were in Town, the 22d, 23d, or 24th of *April*, it would be the best Defence you could make.

*Oates.* I will follow your Directions, my Lord.

Then *Cecilia Mayo* was Sworn.

*Oates.* Pray give the Court an Account, if you did not see me in *London* the latter end of *April*, or the beginning of *May*, 78?

*Mayo.* My Lord, I saw him the latter end of *April*, at my Master, *Sir Richard Barker's*, where I then liv'd. And he came thither again in a few Days, I remember it by this Circumstance, *Sir Richard* was Sick all the Month of *April*, and in the Country, and came to Town but now and then, and *Mr. Oates* came when he was absent; and a young Man, that liv'd in the House, came and told me, there was *Mr. Oates* in a strange Disguise, and he believ'd he was turn'd Quaker. I had never seen *Mr. Oates* before then.

*Cecilia Mayo* deposes *Oates* was in *London* in *April* or *May*, 78. when the King's Witnesses were positive he was at *St. Omers*.

*L. C. J.* How do you know that to be *Mr. Oates* then?

*Mayo.* The Family knew him, and they told me it was he. My Lord, he came three or four Days afterwards to the House, and then the young Man came and told me, *Parson Oates* was turn'd Jesuit: And coming to *Sir Richard's* Lady's Sister, she said to him, *I hear you are turn'd Jesuit, and we can have no Society with you now*; but he staid Dinner with them, and most part of the Day. Then he came the latter end of *May*, *Whitsonide*

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was

was in *May* that Year, and I know he came the second time before *Whitsontide*; for we use to Wash and Scour before that time, and I was sending to a Woman to help Wash and Scour, when the young Man told me he was there.

*L. C. J.* What was the Name of that young Man you speak of?

*Mayo.* His Name was *Benjamin*, but he is dead.

*L. C. J.* Is Sir *Richard Barker* living?

*Mayo.* He is, my Lord; but he is not Well, or he would have been here.

*L. C. J.* Who Din'd with him when he Din'd there?

*Mayo.* There was my Lady's Sister, Madam *Thurrel*, and her two Sons; she is in *Wales*, but her Sons are dead: There was one Dr. *Cocket* too, who is in *Wales* at present: And there were two of my Lady's Daughters, that are living in *Lincolnshire*, I think.

*L. C. J.* It is a great Misfortune to have so many dead, or so far remote,

*Oates.* My Lord, six Years makes a great Alteration in a Family.

*Att. Gen.* Mr. *Oates* has had Time enough to send for his Witnesses, for he has had Notice of his Tryal this half Year. Pray, Mrs. *Mayo*, What colour'd Cloaths had Mr. *Oates* when you saw him first?

*Mayo.* He had a Whitish Hat, and Colour'd Cloaths.

*L. C. J.* Did he go publickly?

*Mayo.* Yes.

*Sol. Gen.* Did he come often to the House?

*Mayo.* He was there frequently.

*Sol. Gen.* It seems he was so disguis'd, that he could Walk publickly in the Streets of *London*, at Noon-Day, and was frequently in the Family.

*Mayo.* Yes, my Lord.

*Att. Gen.* Do you remember what you swore at a former Tryal?

*Mayo.* The same I do now.

*L. C. J.* When was the first Time you saw Mr. *Oates*? Was it in *May* or *April*?

*Mayo.*

*Mayo.* The Coachman saw him as well as I, and he can tell you better than I; but to the best of my remembrance, it was the beginning of *May*.

*John Butler* was Sworn.

*Oates.* Did you give Evidence at the five Jesuits, and *Langhorn's* Tryal, about my being in Town in *April* or *May*, 78?

*Butler.* Yes, I was a Witness there.

*Oates.* My Lord, it is so long ago, that ignorant People, who come without Design, may not be so ready in their Remembrance, as those that have conn'd their Lesson.

*L. C. J.* You would ask him, Whether he will stand by the Evidence he gave then?

*Butler.* That is all I have to say: I testified the Truth then, and will abide by it.

*L. C. J.* But he must give the same over again here, or it will signify nothing. If he has any Notes, he may look on them to refresh him; or you may refresh his Memory, by Questions, as much as you can. Come, I'll ask him some Questions for you.

Do you remember you saw Mr. *Oates*, at any time, in the Year 78?

*Butler.* As near as I can remember, I saw him *Butler deposes*  
in *May*, before the Plot was discover'd. *Oates* was in

*L. C. J.* Where did you see him?

*Butler.* He us'd to come to my Master, Sir *Rich. Barker's*, and Din'd frequently at the Table, when I waited upon my Master. He Din'd there before he went to Sea, a Year before that time in *May*, I spoke of before. *78.*

*Att. Gen.* What Disguise did he come in to your Masters? *Page 412.*

*Butler.* His Hair was close cropp'd to his Ears, an old White Hat upon his Head, and a short Grey Coat, like an Horseman's Coat.

*L. C. J.* How came you to take such Notice of him at that Time, as to be able to swear when this was?

*Butler.* I was call'd presently after to be a Witness.

*L. C. J.* Was that the first Time you had recollected these Circumstances? That was a Year and half afterwards. *Butler.*

*Butler.* Yes, my Lord, that was the first time.

*Oates.* My Lord, it was not so long: The Records shew, that *Ireland's* Tryal was the 17th of *December*, 78; and the five Jesuits, the 15th of *June*, 79.

*L. C. J.* Then it is more than a Twelve-Month, from the *May*, that, he says, he saw you at *Sir Rich. Barker's*, to *Whitebread's* Tryal, when he was examin'd the first time. Now, I desire him to give me a Reason, Why he remembered it was the *May* was Twelve-Month before?

*Butler.* My Lady was buried in *February*, and he came into the Yard where I was cleaning my Coach, in *May* following that *February*, which was *May* before the Discovery of the Plot. He ask'd me what Alteration there was in the Family? And, I said, my Lady was Dead, and her Escutcheon over the Door: And he ask'd for Dr. *Tongue*, and I said he was not within; and he went into the Room where he us'd to lie, and not finding him, went out again. This was the same time Mrs. *Mayo* saw him.

*L. C. J.* His asking for Dr. *Tongue*, or the Escutcheon being over the Door, can neither of them be a Reason for your remembring this was in *May*. For the Escutcheon might be up in *June*, *July*, or *August*, or any other Month after the Time you speak off: Therefore how came you to take Notice that this was in *May*.

*Butler.* Sir *Richard Barker*, my Master, was then Sick at *Putney*, which was in *May*.

*L. C. J.* How long had your Master been Sick, before that?

*Butler.* He had never been Well since the *February* my Lady died.

*L. C. J.* And how long did he remain Sick?

*Butler.* Half a Year I believe.

*L. C. J.* Then *Oates* might come in the Months of *June* or *July*; when 'tis acknowledg'd he was in Town; and yet come during his Sicknes.

*Butler.* My Lord, my Master went not to *Putney* till the latter end of *April*, and he continued there but a Fortnight.

*L. C. J.*



*L. C. J.* Did he continue at *Putney* but a Fort-night?

*Butler.* Not at a time; but he was going and coming a Quarter of a Year. Page 413

*L. C. J.* But this was the first time of his going.

*Butler.* Yes, as I do remember.

*Oates.* My Lord, he is my Witness, and I desire I may examine him?

*L. C. J.* He is mine too: All the Witnesses are mine, to satisfy me of the Truth of the Fact.

*Oates.* And to satisfy the Jury too, my Lord.

*L. C. J.* Yes, and to satisfy the Jury too: But I will sift out the Truth for both our Satisfaction. And, Mr. *Oates*, I'll put you into a Method of clearing up this Matter: You had a Lodging in Town, as well as Diet; and as you eat at Dr. *Barker's* sometimes, so you eat and lay sometimes elsewhere. You were here in Town a considerable Time, if your own Assertions be true. You say you were from *April* to *June* in Town: Now give us some Account where you Lodg'd and Dined, during that time?

*Oates.* I think that is not now the Question: For these *St. Omers* Men do swear, that I was all *April* and *May* at *St. Omers*. Then if I prove that I was not at *St. Omers* in those Months, but here in *London*, I prove their Evidence to be false. And can your Lordship expect, that I, being engag'd among, and for the Papists, and afterwards an Evidence to discover their Treason, can bring any of them to testify for me now. They will certainly forswear themselves, as these young Fellows have done.

*L. C. J.* Then did you always lie in a Papist's House, the two Months you were here?

*Oates.* My Lord, I lay at several Houses.

*L. C. J.* Tell me the Names of any of those Houses?

*Oates.* It is not to the Point in Question.

*L. C. J.* Yes, it is very much; but I perceive it is a Secret, and let the World judge Why?

*Oates.* Surely, they that can have Dispensations for Oaths, ought not to be admitted Witnesses.

*L. C. J.*

*L. C. J.* Talk not of Dispensations; can it be thought you were so long in *England*, and, as they say, so publickly, and no Person see you, but an old Woman, who never saw you before; and a Coachman, that tells a Wild Story, without Reason?

*Oates.* I lay sometimes with *Whitebread*, and sometimes with *Mico*, neither of whom can I have to testify for me.

*Sol. Gen.* You, *Butler*, When was the first time you saw Mr. *Oates* in the Disguise?

*Butler.* As well as I remember, it was the beginning of *May*.

*Sol. Gen.* Who else was by, as you remember?

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*Butler.* Mrs. *Mayo*, and one *Benjamin Turbet*, who is since dead. Mrs. *Mayo* look'd out of a Window, and I believe did see him.

*Oates.* After six Years Time, to ask such poor ignorant People such trifling Questions, they do not tend to satisfy the Jury at all: My Lord, he says I was here in *May*, and that's enough.

*Sol. Gen.* Pray, What Habit was Mr. *Oates* in, when you first saw him?

*Butler.* He was in Disguise: A White Hat flapping over his Eyes, his Hair cut close to his Ears, and a Grey short Coat on: I hardly knew him till he spoke to me. The next Time he came, he had a Cinamon colour'd Suit, and a long black Peruke, and a black Hat with a green Ribbon, and green Cuff Strings at his Wrists.

*L. C. J.* Did *Oates* Dine at your Masters.

*Butler.* Yes, several Times, after my Master came from *Putney*.

*L. C. J.* Who was there besides?

*Butler.* Sir *William Thurrel*, and Madam *Thurrel*, and my Master, and his Daughter.

*L. C. J.* Where is your Masters Daughter?

*Butler.* At Home, at *Putney*, I believe; but now I call to Mind, she did not Dine with him the first time, tho' she did several times afterwards.

*L. C. J.* How often did he Dine there about that Time? Do you think seven times?

*Butler.* I think he might, but I cannot number them.

*L. C. J.*

*L. C. J.* Mrs. *Mayo*, How often have you seen him Dine there?

Mrs. *Mayo*. He din'd there but that once that I spoke of.

*Butle.* He did Dine there several times with them.

*L. C. J.* Then one of you two must be mistaken.

*L. C. J.* Mrs. *Mayo*, What Habit had *Oates* when you saw him first? Page 415.

*Mayo.* He had a Grey Hat, and a Grey Coat, and a short Wig on.

*Sol. Gen.* You are sure it was a Wig.

*Mayo.* Yes, a kind of a brown Wig.

*Oates.* These Things are very lean Stuff to perjure a Witness upon.

*Sol. Gen.* When he came the second time, What Cloaths had he on?

*Mayo.* Afterwards he came in black Cloaths, with a long brown Peruke.

*L. C. J.* Here are several Contradictions in these Witnesses Testimony.

*Oates.* Your Lordship was not so strict, or bore half so hard upon the St. *Omers* Witnesses; and, What does it signify, whether the Wig were long or short, black or brown.

*L. C. J.* We have no other Way to detect Perjury, but by such Circumstances: You know, in the Case of *Susanna*, the Perjury was discover'd by the Circumstances.

*Oates.* Mrs. *Mayo*, as you expect to see the Face of God with Comfort in another World: Did you see me at Sir *Richard Barkers*, in *May*, 78, the Year before the Plot was discover'd?

*Mayo.* Yes, I did; I speak it in the presence of the Lord.

*L. C. J.* We are all of us in the presence of the Lord.

*Mayo.* And shall answer for all that we have said and done, the Proudest and the Greatest here.

*L. C. J.* But I would not have so much to answer for as thou hast in this Business, for all the World. But when did you see Sir *Richard Barker's* Daughter?

*Mayo.* About a Fortnight ago, in *Barbican*, in *London*.

*L. C. J.* Was she at Dinner when *Mr. Oates* was there?

*Mayo.* I can't say whether she was or not.

Then *Philip Page* was call'd.

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He depos'd, That he was Servant to *Sir William Barker*, and made up his Physick: and that *Oates* came in a Disguise, viz. A light colour'd Coat, a broad brim'd Hat, and his Hair cut short to his Ears, to *Sir William's*; and ask'd him for *Dr. Tongue*, and *Sir William*: And he thought this might be in *May 78*. But what Month, or what Year it was, he could not be positive.

*Mr. William Walker* was Sworn.

He depos'd, that he met *Mr. Oates* in a Disguise, between *St. Martin's Lane* and *Leicester Fields*: And he believ'd it was between *Lady Day* and the latter end of *April*, in the Year 78. for the Trees were budded in *Leicester Fields* as big as a *Hazle Nut*; and it was about a Year and a Quarter before the Tryal of the five Jesuits.

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*Oates.* Now, my Lord, I will go on to another part of my Evidence; and first, I shall call *Mr. Serjeant Maynard*, to give an Account of the Proceedings of the House of Commons, upon my Discovery of the Popish Plot.

*Mr. Serjeant Maynard* was Sworn.

*L. C. J.* That can be no Evidence by Law.

*Serj. Maynard*  
examin'd con-  
cerning the  
Proceedings in  
the House of  
Commons.

*Oates.* *Mr. Serj. Maynard* was of the Committee of the House of Commons that manag'd the Impeachment, and can give an Account of the Evidence and Records that were produc'd at the Tryal of the Lord *Stafford*.

*Serj. Maynard.* I can remember nothing of it now: If *Mr. Oates* had told me, when he subpoena'd me, what he would have examin'd me to, probably I have Notes that I took then; but I can never swear to my Memory, for any Cause, so long ago.

*Oates.* Then I desire *Mr. Blaney* may be ask'd, if he has his Notes of my Lord *Stafford's* Tryal.

*Blaney.* No, I have them not.

*L. C. J.* If those were here, they could be of no use to you without the Record of my Lord *Stafford's* Attainder.

*Oates.*



*Oates.* Then, my Lord, I must apply my self to another part of my Defence, which is, to prove the many Attempts that have been made to baffle the Discovery of the Popish Plot, and to stifle the Murder of Sir *Edmundbury Godfrey*, and fling it upon a Protestant Peer.

*Oates* offers to shew the many Attempts that were made to baffle the Popish Plot, but is told it was nothing to the purpose.

*L. C. J.* That is no Evidence in this Case, and it must not be admitted by any means, that the Time of the Court be taken up, or the Jury enveigled, by that which has not a Natural Tendency to the Business before us.

*Oates.* My Lord, this Consult in *April* 78. was discover'd to the House of Commons; I desire I may give in proof, the Proceedings in the House of Commons.

The Journal of the House of Commons no Evidence. Page 418.

*L. C. J.* You cannot: The Journal of the House of Commons is no Evidence.

*Oates.* Then, my Lord, if that part of my Evidence be over-rul'd, I desire I may produce the Members of the House of Commons, who can remember how they proceeded against the Lords in the *Tower*, and the Popish Traytors, upon my Discovery, and what Credit I had in the House of Commons?

Nor any Proceedings in that House,

*L. C. J.* What the House of Commons did on the Discovery, is not any Evidence at all.

*Oates.* If I prove I gave an early Account to any of the House of Lords of this Conspiracy, and of the Consult in *April* as part of it; Will that be Evidence?

*L. C. J.* That is a sort of Evidence.

My Lord *Devonshire* was Sworn.

Earl of Devonshire examin'd.

*Oates.* Will your Lordship please to acquaint the Court, what Account I gave in the House of Commons when you were a Member there, of this Consult? And with what Credit I was receiv'd in all those Parliaments? For my Credit, and the Credit of the Parliament, is now in Question.

*Earl of Devon.* Mr. *Oates*, you gave a long Account of a Consult and Conspiracy among the Jesuits, but I cannot remember any Particular, it is so long since; save, That the two *Westminster* Parliaments, after the long Parliament, were so satisfied with the Discovery, that they pass'd a Vote in the House of Commons

*L. C. J.* The Votes of the House of Commons are no Evidence.

*Oates.* But you will allow the Records of the House of Lords to be Evidence.

*L. C. J.* Yes, they are Records.

*Then the Defendant call'd my Lord Anglesey, my Lord Keeper, Lord Chief Baron, J. Levins, and my L. C. J. Jones, but they were not there.*

Earl of Clare  
examin'd.

Then he call'd my Lord *Clare*, who was Sworn.

*Oates.* The Question I would ask, is, With what Credit I was receiv'd in the House of Lords, on my Discovery?

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*Earl of Clare.* Truly, my Lord, I cannot give any Account, it is of so long standing.

*Mr. Williams* was Sworn.

*Oates.* Sir, you were Speaker of the House of Commons then; please to acquaint the Court, what Credit I receiv'd in that Parliament, upon my Discovery of the Popish Plot?

*Williams.* I remember he was examin'd at the Bar of the House of Commons, and gave a long Account, but what the Opinion of the House was upon it, I must submit to their Votes and Resolutions.

Votes no Evi-  
dence.

*L. C. J.* Which you know are no Evidence: And if they believed him never so much, is that any Thing to the Question before us, Whether he swore true or false at *Ireland's Tryal*?

The Earl of *Huntingdon* was Sworn.

*Oates.* I desire his Lordship would give an Account, What Credit I had in the House of Lords upon my Discovery?

Earl of Hun-  
tingdon deposes  
he had Credit  
once with the  
Lords, but  
they had al-  
ter'd their O-  
pinions of  
him.

*E. of Huntingdon.* I believe *Mr. Oates* found a good Reception in the House of Lords, which was founded upon an Opinion, that he was an honest Man. But since that time, it appearing that there were so many and great Contradictions, Falsities and Perjuries in his Evidence, upon which so much innocent Blood has been shed, I believe a great many who were concern'd in the Tryals of those unfortunate Persons, are heartily afflicted and sorry for their share in it. And, I believe, most of the House of Peers have alter'd their Opinion, as to this Man's Credit, and look upon his Evidence, as I do, to be very false.

Then

Then my Lord Chief Baron appear'd, and was  
Sworn.

*Oates.* My Lord, you sat as a Commissioner of  
*Oyer and Terminer*, at *Whitebread* and *Langhorn's*  
Tryals, I desire your Lordship to give an Account  
of the Satisfaction your Lordship receiv'd, con-  
cerning the fairness and fulness of the Evidence.

*L. C. Baron.* In general, I remember there were  
a great many Persons of very good Credit, and  
Gentlemen of good Families, who came from *St.*  
*Omers*, and gave Evidence of Mr. *Oates's* being  
there, when he said he was in *London*.

*Oates.* Did the Jury believe them at that time?

*L. C. Bar.* I cannot tell what the Jury did, but  
I never had any great Faith in Mr. *Oates*, I do as-  
sure you, as to my self.

*Oates.* My Lord, I am not at all concern'd at  
this; I value my self more upon my own Inno-  
cency and Integrity, than any Mans good or bad  
Opinion whatsoever.

*L. C. J.* Your Innocence is very great; but will  
you call any other Witnesses to this point?

*Oates.* If they bring other Evidence, I hope I  
may answer it.

*L. C. J.* If they bring any new Evidence that  
you have not apply'd to already, you shall be heard;  
but if it only gives an Answer to the Evidence that  
has been given, you must not retort upon them,  
for they are to have the last Word.

The King's  
Council shall  
have the last  
Word.

*Oates.* If they offer any new Evidence to my  
Disreputation, I shall have liberty to make my De-  
fence against that Evidence?

*L. C. J.* Ay, by all means; but there is my Bro-  
ther *Gregory*, whom you call'd, What have you to  
say to him?

Mr. Baron *Gregory* was Sworn.

*Oates.* I desire your Honour would acquaint the  
Court (you being Speaker of the House of Com-  
mons) What Credit I had in that House upon the  
Discovery of the Plot?

*Bar. Gregory.* Truly, I do not remember that  
Mr. *Oates* was before the Bar of the House, when  
I was Speaker.

The Prisoner calls several Lords and Persons of Quality he had *Subpœna'd*, but they did not appear.

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*Oates* has the Thanks of the House of Lords, for discovering the Plot.

Nothing can be urg'd as Evidence, that was done at another Tryal, till the Record of that Tryal be prov'd.

Then the Defendant call'd my Lord Lovelace, my Lord Stamford, Sir Fran. Winnington, Silas Titus, Esq; Sir George Treby, and Sir Fran. Pemberton, but none of them appear'd.

*Oates*. They have all been *Subpœna'd*.

Is my Lord Bishop of London here?

My Lord Bishop of London was Sworn:

*Oates*. Will your Lordship please to acquaint the Court, what Reputation I had in the House of Lords, on my Discovery of the Popish Plot? And particularly, Whether I did not receive the Thanks of the House, for the Service I had done the King and Kingdom in the Discovery.

*L. Bp. London*. I remember the Plot was discover'd by him, and his Discovery was receiv'd as Evidence at the Bar of the House of Lords, and believ'd; and the Thanks of the House were given him at that time for it.

*Sir George Treby* was Sworn.

*Oates*. *Sir George* was Chairman of the Committee of Secrecy, and a Manager in the Tryal of the Lord *Stafford*; I desire he will say what Credit I had in both Houses at that Tryal?

*L. C. J.* You must urge nothing of that Tryal, unless you have the Record here.

*Oates*. Then I desire he may tell what he knows of the Correspondencies between Mr. *Coleman* and the See of *Rome*.

*L. C. J.* That is not at all in Question here.

*Oates*. If he please to tell what Credit I was in with the House of Commons?

*Sir Geo. Treby*. He was several times at the Bar, not upon Oath, but as others usually are. And concerning the Discovery, there pass'd a Vote, That they were satisfied there was a Plot, but whether the Vote was grounded altogether upon his Evidence, I cannot tell.

*Sir William Dolben* appear'd, and was Sworn.

*Oates*. You sat as Judge at the Tryals of *Ireland*, &c. I desire you would acquaint the Court, what Credit my Evidence had, and how the Jury were satisfied with it?

*L. C. J.*



*L. C. J.* There is a Verdict Man that finds the Persons Guilty, which is better than the Opinions of the twelve Judges, for that Point.

*Oates.* I shall call no more Witnesses at present.

*Att. Gen.* As to the first part of the Evidence Mr. *Oates* has produc'd, *viz.* The Records, and Verdicts, and Opinions of the Judges. We shall, in answer to them, produce several other Records wherein he has not been believ'd, as those of Sir *Geo. Wakeman* and my Lord *Castlemain*; and we shall also prove that he was perjur'd in them. Nor was this the first time, for in the Evidence he gave at the Tryal of *Hastings*, we shall prove he swore Buggery upon a Person, which was prov'd false.--- And as to the Objection he makes, *Why was this Prosecution so long delay'd?* We say, There were two other Witnesses, Mr. *Clay* and Mr. *Smith*, at those Tryals, that did positively swear Mr. *Oates* was in Town in *April* and *May*, 78. And Sir *Rich. Barker* himself then added his Testimony, which gave a probability of Truth to what he depos'd, and did not balance the Testimony of those that came from *St. Omers*. But we had not then discover'd, that his being at *St. Omers* could be testified by twenty Persons more, who were not at that Tryal; and his tampering with the two principal Witnesses, *Clay* and *Smith*, to induce them to swear what they did, was not discover'd till within this half Year, and then we were encourag'd to make an Enquiry into this Matter. And upon my mentioning this Practice, if he had any Shame in him, it would put him into some Confusion.

*Sol. Gen.* First, my Lord, we will produce our Records.

*Cl. of the Cr.* Here is an Indictment against Sir *George Wakeman*, for High Treason; he pleaded *Not Guilty*, and here is an Acquittal by the Jury.

*Att. Gen.* Sir *George* being acquitted, I desire he may be sworn (*which was done.*)

*Sol. Gen.* What Particulars did he swear against you at that Tryal?

*Sir George.* He swore, that I undertook, for Fifteen Thousand Pound, to poison the King; and I was to do it by means of the Queen. I was to provide

The King's Council reply, they produce Records of Tryals where *Oates's* Evidence was not believ'd, but the Parrics acquitted.

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The Reason why this Prosecution was so long delay'd.

His tampering with the Witnesses at the former Tryals lately discover'd.

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*Oates* swears the Queen in to a Conspiracy with Sir *George Wakeman*, to poison the King.

vide the Poison for her, and she was to give it the King: Than which, nothing can be more false, upon my Oath; I speak it without any Malice to the Man in the World. I'll be bound to make it appear, that all he swore against me, was false.

My Lord *Castlemain* was Sworn.

*Sol. Gen.* Read the Record of my Lord *Castlemain's* Acquittal.

*Cl. of the Cr.* Here is the very Record it self; it was in this Court my Lord *Castlemain* was Indicted of High Treason, and tried, and acquitted.

*Att. Gen.* Pray, my Lord, tell the Court, what *Oates* did swear against you at your Tryal?

*Oates's* Evidence against the Earl of *Castlemain*.

*E. of Castlemain.* Mr. *Oates* did swear, That he met me in *Lincolns-Inn-Fields*, and that he went with me to *Mr. Fenwick's Chamber*, in *Duke-street, Covent-Garden*; where, he said, I talk'd a great deal of Treason: And, he depos'd, that I was concern'd in several Cabals about the King's Death. And here, I do declare, as in the presence of God, and with all the Imprecations of Divine Vengeance, if I speak any thing but the Truth, That not only what he swore was false, but that I never had any Thoughts, much less did I ever declare in Words, any Hurt or Injury to the late King. And further, That I never saw the Face of *Oates* in my Life, till after I was put in Prison on his Accusation of me.

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*Oates* objects that those who had been Indicted on his Evidence, and acquitted, ought not to be admitted Witnesses against him.

Insinuates that the Design of prosecuting him, was to smother the Plot.

*Oates.* I wonder Mr. *Attorney* will offer to bring this Evidence——Men that must have Malice against me.

*L. C. J.* You are a Shame to Mankind.

*Oates.* I am neither a Shame to my Self, or Mankind: What I have sworn, I'll stand to with my last Breath, and seal it, if occasion be, with my Blood.

*L. C. J.* It were pity but that it were to be done by thy Blood.

*Oates.* Ah, my Lord, I know why all this is, and so may the World very easily too! But this will not do, to make the Plot be believ'd.

*L. C. J.* Can you think to outface such Evidence as this, with your Impudence?

*Oates,*

*Oates.* My Lord, if I had been aware of this, I could have produc'd Evidence that would have supported my Evidence in these Matters.

*Att. Gen.* Now we shall show the Lords Journal, where it is recorded, he depos'd, that he could accuse no Body else but those he named: And then, that he soon after accus'd the present King, and the Queen Dowager.

*Cl. of the Cr. Reads.* Die Veneris 19 Novembr. 1678. Titus Oates being call'd in at the Bar, desir'd to be heard a few Words before he was Sworn, &c.

*L. C. J.* Mr. Attorney, I doubt this will not be Evidence; it is only a Paper of what he said, for it is not upon Oath.

*Att. Gen.* My Lord, we make use of it to prove he did accuse the Queen.

*L. C. J.* What is the Accusation of the Queen to this purpose?

*Att. Gen.* He swore, some Days before, he had no other Persons to accuse.

*L. C. J.* You should produce that first, that he swore so.

*Cl. of the Cr. Reads.* Die Mercurii 30 Octobr. 1678. Titus Oates being call'd in, was sworn at the Bar, and requir'd to answer to what he is now call'd in for, concerning his Discourse with my Lord Annelly last Night, about the Duke of York.——

*L. C. J.* I doubt this will not be Evidence neither: Suppose an Oath were administred to me, for a particular purpose, in the House of Lords, that I should answer to what was demanded of me, concerning a Discourse I had with a third Person.—— This is a particular Oath, to a particular Purpose, and shall I help it by Intendment that he was afterwards sworn to the general Matter; if any Thing had happen'd afterwards, that it should have been thought fit to prosecute *Oates*. Could the Man be Convicted of Perjury for this? Certainly he never could.

*Sol. Gen.* My Lord, We submit it to you, and shall go on to prove, that *Oates* did suborn *Clay* and *Smith* to swear what they did.

A Deposition of *Oates's* concerning a Discourse he had with a third Person, produc'd against him, but the Court held that to be no Evidence. Page 425.

Mr,

Mr. Charles Howard was call'd.

No objecting to the Evidence of a Popish Recusant, unless the Record of his Conviction be produc'd.

*Oates.* I beg the Opinion of the Court, Whether a Popish Recusant Convict may be a good Witness?

*L. C. J.* If you can produce any Record against him, we will tell you more of our Minds.

*Oates.* I desire to know, Whether a Man confessing himself a Popish Priest—

*L. C. J.* 'Tis nothing at all to the purpose, when you ask a proper Question, we will answer it.

*Oates.* It is to the purpose, my Lord, and you are of my Council in matter of Law.

*L. C. J.* Indeed, where a Man can have no Council allowed him, the Court is of Council for him; but where he may have Council, the Judges are not of Council for him.

Mr. Charles Howard was Sworn.

*Att. Gen.* My Lord, We only bring this Gentleman to prove, that Mr. Clay was mistaken a whole Year; that he mistook 78 for 77.

*Higgins* was Sworn.

*Att. Gen.* The Matter we would examine him to, is this: *Oates* first swore *Smith* into a Plot, and then gave him a Certificate that he was an honest Man.

*L. C. J.* Is that *Oate's* Hand?

*Att. Gen.* We shall prove it to be so.

*L. C. J.* You must first prove what he swore of *Smith*.

*Att. Gen.* We desire that we may read his Narrative.

*L. C. J.* But first prove it Mr. Attorney.

Then my Lord *Bridgwater* was Sworn.

*L. C. J.* My Lord, Do you know that this Narrative was given into the House of Lords, by Mr. *Oates*, upon Oath?

*E. of Bridgwater.* I know no other, but that the Clerk of the Parliament brought it to us.

*Att. Gen.* Pray, my Lord, let the Clerk read what is at the end of it?

*Cl. of the Cr. Reads.* *Hitherto examin'd, the 3d Decemb. 1678. the Narrative and Examinations of Titus Oates, being first incerted, according to the order of the House of the 21st of Nov. last, by us, Anglesey, &c.*

*Oates's* Narrative given into the House of Lords upon Oath, produc'd as Evidence against him.

*Att.*



*Att. Gen.* Read the Order of the 21<sup>st</sup> of Nov.

*Cl. of the Cr. Reads.* Upon Report made by the Earl of Bridgwater, from the Lords Subcommittees for examining the Journal of this House. Upon Examination thereof, their Lordships find, that the Narrative made upon Oath, by Titus Oates, at the Bar, on the 31<sup>st</sup> of October last, of the horrid Design against his Majesty's Person and Government, is only mention'd in the Journal, but not enter'd at large. Their Lordships therefore desire the Direction of the House in this Matter. It is thereupon order'd, that the said Narrative made by Titus Oates, the said 31<sup>st</sup> of October, shall be enter'd at large, and inserted in the Journal, as part of the Business of that Day.

*L. C. J.* Now you make it Evidence, for it appears that he was Sworn, and gave in his Narrative upon Oath.

Then the 54<sup>th</sup> Article of the Narrative was read, importing, that *Smith*, and others, were employ'd by the Jesuits, to vilify the House of Commons, and the Bishops; and that at a Club in *Fuller's Rents*, he heard them assert, That the Commons were the Devil's Representatives, and not the Nations. And that in the Month of *August*, the Deponent was order'd by the Jesuits, to thank the Club for their Services.

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*Att. Gen.* Thus, you see what he swore against *Smith*. Now we shall shew a Certificate under *Oates's* Hand, not three Days before the Tryal of the Jesuits, of *Smith's* Honesty.

*Cl. Reads.* These are to certify that *William Smith* is no Papist, and that he is upon good Service at this Time, for his King and Country; of which, I hope those that are Enquirers after Recusants, will take Notice.

3d June 1679, *Titus Oates.*

*L. C. J.* What Harm is there in all this? I see no Plot he swore him into, for my part, unless you mean Treason against the House of Commons.

*Att. Gen.* But he is accus'd as a Confederate with the Priests and Jesuits.

*Oates.* Did I charge him with being in the Plot against the King, Mr. Attorney?

*Att.*

*Att. Gen.* I only give it as an Evidence of his Tampering: He comes, after this, and gives him an Acquittal under his Hand, and produces him as an Evidence.

*L. C. J.* There can be no great Matter in this, Mr. Attorney.

*Att. Gen.* Then we will call Mr. *Smith* himself, (who was Sworn.) Pray acquaint the Court, who persuaded you to swear at the former Tryal, and how you varied from the Truth?

The Chief Justice refuses the Testimony of one who came to swear he had perjur'd himself at a former Tryal.

*L. C. J.* That's very nauseous and fulsome: If he has forsworn himself, shall he ever be admitted a Witness again?

*Att. Gen.* It is not the first time, by twenty, that such Evidence has been given.

*Sol. Gen.* My Lord, this Testimony was ever allow'd to detect a Subornation: We only make use of him, to prove that *Oates* did suborn him.

*L. C. J.* Pray call some other Witnesses; but do not bring a Man to swear, he did forswear himself before.

*Sol. Gen.* My Lord, his Confession to another, that he was forsworn, would have been some sort of Evidence: And surely, when the Man comes himself, and with great Sorrow confesses his Fault, and owns he was mistaken, this is a good Evidence. And in many Cases, it will be impossible to detect a Perjury, if the Party suborn'd cannot be a Witness.

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*L. C. J.* It is certainly against Law, to admit a Man that has once forsworn himself, to be a Witness in any Cause.

Then Laurence Davenport was Sworn.

Evidence of *Oates's* suborning *Clay* to be a Witness at the Tryal of the five Jesuits.

*Att. Gen.* Pray give the Court an Account how *Clay* came to be a Witness?

*Davenport.* I was then a Prisoner in the Gate-House myself, and had the Care of some of the other Prisoners, and Mr. *Oates* us'd to Visit old *Clay* in the Prison; and before the Tryal of the five Jesuits, I heard him say to *Clay*, in his Chamber, That if he did not swear what he put to him, he should be prosecuted as a Priest, which he believ'd he would die for; and Sir William Waller was with Mr. *Oates*. And old *Clay* replied, If you would give him

him his Gold and Silver that was taken from him, (being under my keeping, and wanting Money) if you would do that, he said, he had been a Rogue before, and he did not know what he might do. Afterwards I waited on Clay to Newgate Sessions, and Mr. Oates came to us, and said, Do not trouble your selves about this Prisoner, I will see him at home again; and then the Jesuits took their Tryals, but I could not get into Court. And Mr. Oates and Clay din'd together at the Fountain Tavern by Newgate, and we waited for them in the House, but Mr. Clay left us in the lurch. However, he came again to the Prison very honestly the next Morning.

Oates demanded if he was Clay's only Keeper, and why he did not testify this at the Jesuits Tryal.

Davenport answer'd, There was no Keeper but himself in the House where Clay lay, which was in Margarets Lane, and not in the Prison; and that the Deponent was not in Court at the Tryals, to hear what Clay depos'd.

Mr. \_\_\_\_\_ was Sworn.

He depos'd, that Davenport came to him in the Prison, the next Day after this Discourse, and told him that Mr. Oates and Sir Will. Waller had been tampering with Clay to make him swear for Oates; and said, he must swear that Oates din'd at Mr. Howard's such a Day of the Month; and Mr. Clay said, he knew nothing of the Matter, but then Sir William Waller and Mr. Oates reply'd, Here's your Choice, if you will not swear this, we will try you for a Priest, and hang you; and so Clay agreed, if he might have his Money restor'd that was taken from him, he had been a Rogue before, and he did not know what he might do.

Oates. He speaks only Hearsay: Is this Evidence?

L. C. J. Yes, very good Evidence: He establishes the other Man's Testimony, this being told the next Morning.

Mr. Howard being sworn before, was call'd.

Att. Gen. Pray, What did Clay swear at Langhorn's Tryal?

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Hearsay admitted in Evidence to confirm another's Testimony.

Howard.

*Howard.* He did swear that he was at Dinner with me and Mr. *Oates*, at my House, in *May* 78.

*Sol. Gen.* Was he then at your House with *Oates*?

*Howard.* No, he was not there in *May*. Mr. *Clay* was with me and Mr. *Oates*, in *July*, 78, after the 4th of *July*.

*Att. Gen.* That is after the time he came to *London* from *St. Omers*.

*Sol. Gen.* We must desire the 28th Article of Mr. *Oates's* Narrative may be read.

Then the said Article was read, importing, that *Father Warren*, Rector of *Liege*, and the other Jesuits, to the number of Fifty, met at the *White-Horse* Tavern in the *Strand*, the 24th of *April*, 78, where they consulted the Affairs of the Society, and chose *Father John Carey* to go Procurator to *Rome*: And that then they parted, and went to several Houses, five or six in a Company; and so separated, did contrive the Death of the King. And the Depo-  
nent did carry Papers from Company to Company, containing their Opinions of the Timing the Business, and the Manner how it was to be done. And within three or four Days after, the Depo-  
nent went to *St. Omers* with the Fathers that came from the other side the Water.

*Att. Gen.* We produce this to confute the Witnesses, that mention his being here a Week in *May*: For he says here, that the Consult was the 24th of *April*; and within three or four Days after, he return'd to *St. Omers* again: And I my self heard him declare here, and in many Tryals at the *Old Baily*, that all was finish'd in that Day, and he went in a few Days.

*Oates.* You are mistaken, for the Consult was not dissolved in six or eight Days, though they were not sitting or acting every Day.

*Att. Gen.* It is not a difference of six or eight Days that is contended for; his Witnesses swear he was here the latter end of *May*, which cannot be, if *Oates* swears true.

*Oates.* My Lord, Mr. *Attorney* does not apprehend the Evidence aright.

*Att. Gen.* We have done our Evidence, my Lord.

*Oates.*



*Oates.* My Lord, I have a Copy of a Record out of the House of Lords, I desire may be read. Page 430.

Then a Resolution of the Lords, the 25th of March, 1679. was read.

*Resolv'd*, Nemine Contradicente, *That there now is, and for divers Tears last past hath been, a Horrible and Treasonable Plot and Conspiracy, contriv'd and carried on by those of the Popish Religion; for the Murthering of his Majesty, and Subverting the Protestant Religion, and Establish'd Government of this Kingdom.*

Another Resolution of the 25th October, 1680. was read.

Importing, that Capt. *Thomas Birkley* had villified *Oates's* Evidence at *Chichester*, to the prejudice of his Majesty's Evidence for the further Discovery of the Plot; and that he should be requir'd to attend the Lords the 3d of *November* following, to answer it.

*L. C. J.* Well, What say you to it *Mr. Oates*, now you have done with your Evidence?

Then *Mr. Oates* said, He was not asham'd to own the Evidence he had given of the Jesuits Consult; for it was all Truth, and he was resolv'd to stand by it, and confirm it with his Blood, if there was occasion. *Oates again asserts, there was a Treasonable Consult.*

And as to the Evidence that had been produc'd against him, He insisted, that a Papist, in Case of Religion, ought not to be believ'd, and receiv'd as a Witness; and he quoted 2 *Bulstr.* 155. Which says, it was my Lord *Coke's* practise not to admit them. *Objects to the Testimony of the Papists, as being Parties.*

The Court told him, a Papist was a good Witness; and whatever my Lord *Coke's* Practice was, the Law was otherwise.

*Oates.* I desire I may have leave to argue that as a Point of Law, in my own Defence. Page 431.

*L. C. J.* No, Sir, it is no Point of Law at all.

*Oates.* Then, I appeal to all the Hearers if I have Justice done me! *He appeals to the Hearers, that he has not Justice done him.*

*L. C. J.* You impudent Fellow, Do you know where you are? you are in a Court of Justice, and must appeal to none but the Court and the Jury.

*Oates.* I do appeal to the Hearers.

*L. C. J.*

*L. C. J.* Take him away there ! If you do not behave your self as you ought, the Court will do what they ought, and stop your Mouth.

*Oates.* What you please my Lord, I must make my Defence as well as I can.

*L. C. J.* We will suffer none of your Commonwealth Appeals to your Mobile ; keep within the Bounds of Decency, and say what you will for your self.

*Oates.* Another thing I object to the Testimony of these Witnesses, is their Education.

*L. C. J.* That's no Objection at all neither.

*Oates.* My Lord, they are bred up in Seminaries against Law, for which their Friends ought to be punish'd.

*L. C. J.* And every Man that's bred a Dissenter, is bred up against Law.

*Oates.* I have not produc'd a Dissenter as Evidence for me.

*L. C. J.* Goodwife *Mayo*, and her Companions, are excellent Protestants no question.

*Oates.* I desire the Statute of the 27 *Eliz. c. 2.* may be read, entitled, *An Act against Jesuits, Priests, and other such-like disobedient Persons.*

*Just. Withins.* Does this Statute say they are no good Witnesses.

*Oates.* They own themselves to be Educated at *St. Omers*, and that's against this Law expressly.

*L. C. J.* Do they own themselves to be in Orders, Jesuits or Priests ? then you might say something to them upon this Law ; but, Why do you spend our Time in Trifles ? Mr. *Attorney*, go on, for we will not sit here to spend our Time for nothing.

*Oates.* My Lord, I shall propose but one Statute more to your Consideration ; it is the 3 *Car. II. c. 2.*

*L. C. J.* It is nothing to the purpose.

*Oates.* Then let me offer their Judgments in Cases of Conscience, where they own they have Dispensations to swear Lies for the promoting of the Cause.

*L. C. J.* That is no Evidence neither.

*Oates.* This is very hard : It is Evidence against the poor Dissenters, my Lord.

*L. C. J.*

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Urges that Papist may have Dispensations for Lying, to promote the Cause.

*L. C. J.* It is not Evidence against any Person in the World, if you'll take my Word for it.

*Oates.* I have this farther to offer: When my Lord *Shaftsbury* was committed to the *Tower* for High Treason. His Friends mov'd, that they might have liberty to bring an Indictment of Perjury against the Witnesses that accus'd him; but the Court would not suffer it, because they would not have the King's Evidence Indicted of Perjury, or the Plot call'd in Question.

That an Evidence for the King cannot be Indicted for Perjury.

*L. C. J.* This is nothing to the purpose.

Then Mr. *Oates* proceeded to sum up the Evidence his Witnesses had given, and begun with Mrs. *Mayo*, and observ'd, that she came and gave her Evidence voluntarily, without any hopes of a Reward, but out of a Love to Justice; and therefore insinuated, that her Testimony was not to be suspected, for People seldom perjur'd themselves, but where there was Malice or Interest in the Case. Then he repeats the Evidence of *Butler* and *Page*, and said, he had Suborn'd Sir *Richard Barker*, to confirm the Evidence of these People. And he did expect that Mr. *Smith* would have been examin'd, but he perceiv'd the Court were tender of that Point, as knowing, it would then easily have been seen, upon which Side he was Suborn'd.

*Court.* It was to do you Right, we refus'd to have him sworn; but if you consent to it, he shall be examin'd still.

*Oates.* My Lord, the Evidence on which I am Indicted for Perjury, is the same that was given six Years ago. There was then Sixteen Witnesses produc'd against me, but, What Credit did they receive? Now, if the Evidence I gave then was to be believ'd, though oppos'd by so many Witnesses, What new Objection does arise, which was not then urg'd, and receiv'd an Answer? And I hope those Passages of Heat, that have fallen from me, shall not make me fare the worse in your Judgment. I call'd some Noble Lords to testify for me; but either the distance of Time has wrought upon their Memories, or the difference of the Season has chang'd their Opinion: So that

Says if his Evidence was Credited six Years ago, tho' sixteen Witnesses oppos'd him, it ought to be so now.

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they now dis-believe what they believ'd before, and perhaps for as little Reason as——

*L. C. J.* As they believ'd you at first.

*Oates.* Yes, Truly my Lord, for I cannot expect, that a Man who believes without a Principle, should not recant that Belief without a Reason.----- I name no body.

*L. C. J.* But the Nobility that are present, and have been Witnesses in this Cause, are all Persons of that Honour, that the Court is bound to vindicate them from these scandalous Reflections; but only, I think, a Slander from your Mouth, is very little Scandal.

*Oates.* Nor from somebodies else neither; I find, my Lord, I am not to be heard with Patience.

*L. C. J.* You do not deserve to be heard at all: Can't you speak without Reflections?

He insists, that his Evidence at the Tryals of my Lord *Castlemain* and Sir *George Wakeman*, was true, and that my Lord was acquitted, only because there was but one Witness.

*Oates.* Was ever Man dealt with as I am? Or had such Evidence offer'd against him? Here are the Youths of *St. Omers* Seminary, Sir *George Wakeman*, and my Lord *Castlemain*, known Papists, and, perhaps, Popish Recusants Convict too. And the Record of my Lord's Acquittal, is brought as an Evidence of my being perjur'd; when all the World knows, he came off, because there was but one Witness against him. And *Wakeman's* Acquittal too, is brought, and he swears, That what I depos'd against him was false; but had it not been for two dishonest Persons (one of them is now in my sight) we could at that time have prov'd Five Thousand Pound paid him, and that he gave a Receipt for it. This I am sure, had I been a Witness for the Fanatick Plot, I had never been question'd, though my Evidence had been false: But the Papists have now a Turn to serve, and come to bear this Testimony, on purpose to falsify my Evidence, and bring off the Popish Lords, who now stand Impeach'd of High Treason. But I hope, as the Court would never admit Indictments of Perjury, against the Witnesses in my Lord *Shaftsbury's* Case, so you will not admit it here. My Lord, it is not me they prosecute, but the whole Protestant Interest. Do they not hereby Arraign the Proceedings of several Parliaments? Of all the Courts of

Says, 'Tis the Protestant Cause, and not he that is struck at.



of Justice, and the Verdicts of those Juries that convicted the Traytors; for my Part I care not what becomes of me, but the Truth will one Time or other appear: And since I have not the Liberty to argue what is most material for my Defence, I appeal to the Great God of Heaven and Earth; and once more in his Presence, and before this Auditory do avow, That my Evidence of the Popish Plot is true in every Part of it, and will expect from Almighty God, the Vindication of my Integrity and Innocence.

Appeals to  
God for the  
Truth of the  
Plot.

Then he desir'd he might be brought up by Rule to hear his Tryal, that was to be next Day (*which was Granted.*)

He said he was troubled with the Gout and Stone, and desir'd he might not be put in Irons again, he being only a Debtor to the King upon a Civil Account; and if he were Convicted on these Indictments, he could be but in Execution for a Trespas, and therefore thought he ought not to be so handled. The Marshal inform'd the Court, that it was but the last Night, Ropes were brought into his Chamber to favour his Escape. Then the Court directed he should be kept *in salva & arcta Custodia.*

Moves he  
might not be  
kept in Irons.

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Mr. *Solicitor* summ'd up the Evidence for the King, but before he had made any great progress, Mr. *Oates* said he was Ill, and desir'd Leave of the Court to withdraw.

Desires leave  
to withdraw  
before the E-  
vidence was  
summ'd up.

Then Mr. *Solicitor* proceeded, and having summ'd up the Evidence that had been given for the King, he observes, That of the twenty Witnesses produc'd, not above two or three of them were at the former Tryals; though, indeed, they testified the same Things that were attested then, but with many other Circumstances and Particulars. That to this, indeed, *Oates* had objected, that several Witnesses came from St. *Omers* before, but were not believ'd; but that the Men were Convicted, Condemn'd and Executed upon his Testimony. That he had also brought a Counterproof, and endeavour'd to shew he was actually in *England*, when the St. *Omers* Witnesses had sworn him to be in the College.

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As to the Evidence of *Page*, Mr. *Solicitor* observ'd, That he was not positive either to the Month or Year he saw Mr. *Oates*; and as for *Walker* the Parson, he being ask'd, What Circumstances he knew the Time by, said, it was a Year and a Quarter before the Plot was discover'd; which was a Year before *Oates* pretended to be at the Consult, and therefore could do him no Service.

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Mr. *Solicitor* shews how *Oates's* Witnesses contradicted one another.

As to the Evidence of Mrs. *Mayo* and *Butler*, he observ'd, they contradicted one another: For she depos'd, that the first time *Oates* came she did not see him; and *Butler* swears she look'd out of the Window, and did see him as well as he. And she said he was in Grey Cloaths, a White Hat, and a short Peruke; and *Butler* said he had no Peruke, but his Hair cut short to his Ears. Then the second time, she swears he was in black Cloaths, and an indifferent long Peruke, and that the Peruke was brown. And *Butler* swears he was in Cinnamon colour'd Cloaths, and a long black Peruke; so that the Witnesses could not be réconcil'd to one another.

He observ'd too, That she had sworn *Oates* was at her Masters a Week before *Whitsonside*, which was the 19th of *May*. And this contradicted Mr. *Gerrard's* Testimony, who swears, they were both Confirm'd the 16th, at St. *Omers*; which was so remarkable a Circumstance, that there was no room to think Mr. *Gerrard* mistaken.

And farther, That Mr. *Oates* himself had contradicted his own Witnesses, for he had sworn he went over with the Fathers three or four Days after the Consult, which was the 24th of *April*; and they attest that he was here in the middle of *May*; and if it should be admitted the Consult continued five or six Days, as he had suggested, yet that would not bring it to the Time they had sworn to.

How *Clay's* Evidence, on which such Stress was laid at former Tryals was confuted.

That false Witnesses were often detected by small Circumstances, but that these were very Remarkable: and it was impossible they could both swear true.

That the Evidence of *Clay* the Priest, on which such Stress was laid at a former Tryal, was not only

only taken away by Mr. *Howard's* Testimony, but the additional Crime of Subornation was now fix'd upon *Oates*, who, it appear'd, had threatned *Clay* he would hang him, if he did not swear what he suggested to him. And it was well known what Fears such People lay under at that time.

That 'twas impossible Mr. *Oates* could be so long in Town as he pretended, and be seen by no body but those few Persons he mention'd; considering his large Acquaintance, and that he appear'd so publicly as his Witnesses depos'd. That though he had lodg'd at the Houses of Persons that did not care to give their Evidence in this Matter, yet it was strange he could not produce one Circumstance to prove his lodging at any place, during that time, if he could not have the Testimony of the Landlord of the House. And that none of those he had convers'd with, or was intimate withal, should see him, or be able to give any Account of him, was one of the strangest Things in the World.

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That it was strange he could not make it appear where he lodg'd all the Months he pretended to be in Town.

That indeed he insisted upon it, that the calling his Credit in question, was to arraign the Justice of the Nation, the Wisdom of the Parliament, and the Honesty of the Juries who Convicted those he had accus'd. But the *Solicitor* urg'd, That if the Thing was duly consider'd, the not punishing this heinous Offence with the utmost Severity the Law would allow, now these Circumstances had appear'd to make it evident, would be a much greater Reproach to the Nation.

That it was strange, indeed, that the Defendant should ever obtain that Credit he once had. But it was not then imagin'd, that any Man on Earth could become so impudent, as to expose himself before the High Court of Parliament, and the Great Courts of Justice, and there tell a most infamous Lie, to deprive Men of their Lives. The Hardiness of the Attempt, was one great inducement to the Belief of it; because, no Man could be presum'd to dare the doing of such a Thing, if he had not had some Foundation of Truth to build upon. And when he had made this Discovery of a most horrid and bloody Conspiracy, to Murder the King, Overturn the Government, and Massacre all the Pro-

He sets forth how *Oates* came to be believ'd,

testants in the Kingdom. It was natural enough for the Parliament to be Alarm'd, and take all imaginable Care to prevent the Accomplishment of so much Mischief. If we consider too, how much easier it was for him to relate his Evidence in a continued Story, than afterwards it was to maintain it, when he was oppos'd by them that were accus'd; who best knew by what Means to prove him false.

That the Care the Parliament took to disappoint any Designs of this Nature, and the Means they us'd for the security of the King and Kingdom, and the preservation of our Religion and Lives (which was previous to the Tryals) naturally put the whole Nation under great Apprehensions of Danger, and made the Way much easier for him to be believ'd. Under these Circumstances (and these improv'd by Designing Men) came those unhappy Persons to be Tryed; which lessens our Wonder, if under these Disadvantages, while the Men who Tried them were under these Fears and Apprehensions, they had the ill Fortune to be Convicted. But when Men had a little overcome their Fears, and began to consider his Evidence more calmly, *Oates* soon lost his Credit, and the Men he afterwards accus'd, were all acquitted.

Page 439. Nor was this Prosecution any Reflection on the Protestant Religion, whose Cause he falsely assum'd. The Protestant Religion had no share in the Invention, and needed not the Support of a Lie. It was rather a Vindication of our Religion, to punish such Offenders, and the proper Way to maintain the Justice of the Nation, and wipe off that Reproach that this Man's Perjury has brought upon it.

The Chief Justice directs the Jury.

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Then my Lord Chief Justice summ'd up the Evidence, and gave his Directions to the Jury. And to the Observations Mr. *Solicitor* had already made, he added, " That the dreadful Apprehensions People were under of their Religion, the Subversion of the Government, of the King's being Murder'd, and of their Throats being to be cut by the Papists, at the time of *Ireland's* Tryal, was arriv'd to that height, and *Oates's* Discovery



“ Discovery of those impending Dangers so much  
 “ Credited, that all other People appear’d below  
 “ him; and greater Respect was shewn him, than  
 “ to the Branches of the Royal Family. And in Pub-  
 “ lick Societies, sometimes, this profligate Villain,  
 “ was Caref’s’d and Drank to, and Saluted, by the  
 “ Name of *The Saviour of the Nation*. And that  
 “ it was no wonder, if under such a Consternati-  
 “ on, or rather, Infatuation, of all sorts of Peo-  
 “ ple, all of the Romish Persuasion were look’d  
 “ on with an Evil Eye; and the Conviction of  
 “ those who were accus’d, render’d too easy. He  
 “ observ’d, That the principal part of *Oates’s* De-  
 “ fence consisted in this, That because he was be-  
 “ liev’d formerly, before his Villany was dete-  
 “ cted, that therefore they should believe him  
 “ now; notwithstanding his Perjury had been dis-  
 “ cover’d, and that to the positive Testimony of  
 “ Twenty two Witnesses, who had sworn he was  
 “ at *St. Omers*; he had not made the least Shadow  
 “ of an Objection, but only, that they were Pa-  
 “ pists, and he was a Protestant. But his Lord-  
 “ ship observ’d, there were Rascals of all Persua-  
 “ sions, and he thought it not much for the Ho-  
 “ nour of the Church, that *Oates* call’d himself a  
 “ Protestant. That they knew *Dr. Oates* had been  
 “ very liberal to himself: He had given himself  
 “ Baptism, and given himself the Doctor’s De-  
 “ gree, and now he gave himself the Title, of the  
 “ Reforming Protestant, *Mr. Oates*. That we  
 “ had Protestant Shoemakers, and Protestant Joi-  
 “ ners, and all sorts of true Protestant Rascals;  
 “ but it would become the Jury to assert the Ho-  
 “ nour of their Religion, by disowning any Fel-  
 “ lowship with such Villains, or their Actions.

“ That besides the Evidence against him, they  
 “ should consider the improbability of his Testi-  
 “ mony. That Fifty Persons should meet toge-  
 “ ther at a Tavern, and come to a Resolution to  
 “ Kill the King, and Subvert the Government,  
 “ and Alter the Religion. And that this Resolution  
 “ being drawn up at the Tavern, they should se-  
 “ parate themselves into lesser Clubs and Compa-  
 “ nies, and none of them Sign it when they were  
 “ altogether,

Takes Notice  
 how *Oates* was  
 stil’d *The Sa-  
 viour of the Na-  
 tion*, on the  
 pretended Dis-  
 covery.

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 Shews the im-  
 probability of  
*Oates’s* Testi-  
 mony.

“ altogether, and among themselves, but should  
 “ afterwards have it carried up and down from  
 “ one House to another, and find no body to trust  
 “ with it but Mr. *Oates*, who was not one of their  
 “ Order, and did not appear to have any Credit  
 “ amongst them; when the Affair was of that  
 “ Importance, that if discover’d, it must subject  
 “ them to present Destruction, and ruin their  
 “ whole Party. Could it be believ’d, that any  
 “ Man should be so void of Sense and Reason, and  
 “ that of Fifty together, and those reputed the  
 “ Subtlest of Mankind, there should not be one  
 “ Man that should take Care of a more rational  
 “ Management, of so great and hazardous an Un-  
 “ dertaking? When they were met together, and  
 “ might have dispatch’d the Business in a quarter  
 “ of an Hour, that they should separate them-  
 “ selves into several parts of the Town, and trust  
 “ a Resolution of that nature in Mr. *Oates*’s  
 “ Pocket: In whom, if they had more Confidence  
 “ than they seem’d to have, yet it was Folly and  
 “ Madness to give him that Opportunity of De-  
 “ stroying them all, and making his own Fortune,  
 “ And that if there were no other Evidence than  
 “ the Testimony of the Thing, his Lordship said,  
 “ it would have gone a great Way with him; but  
 “ that there being the superadded Testimony of  
 “ Twenty two Witnesses, there was no room left  
 “ to doubt of the Falsity of his Evidence.

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“ That as to the Business of *Smith*, though the  
 “ Court, in their private Judgments, did believe  
 “ the Thing, yet they thought it not fit to per-  
 “ mit, that Persons should, upon their Oaths, con-  
 “ fess themselves Guilty of Perjury, and after-  
 “ wards give Evidence against others; yet by the  
 “ Records of Parliament, and other Evidence,  
 “ there was enough to make that Matter clear.  
 “ For by *Oates*’s Narrative it appears, That his  
 “ first Evidence tended to bring *Smith* into the  
 “ Displeasure of the People: For his Way was,  
 “ to frighten those he design’d to deal with, and  
 “ thereby force them to comply with his Designs.  
 “ And there could not be a more plausible Accusa-  
 “ tion at that time, than to charge a Man with  
 “ saying

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“ saying something against the Parliament, or  
 “ with being in a Combination to subvert the Pro-  
 “ testant Religion. But when he has a Turn to  
 “ serve by him, then this Man, on whom he had  
 “ fixed such an Odious Character, he tells us, is  
 “ really no Papist, but isingaged in Service for his  
 “ King and Country; and has Mr. *Oates*’s Passport,  
 “ which was a Thing of no small Advantage to him  
 “ at that Season. This was, with great Reason,  
 “ made use of by the King’s Council, as an Evi-  
 “ dence of his Tampering. For the Man suddenly  
 “ alters his Opinion of one he had before accus’d,  
 “ and produces him as an honest Man, to give Evi-  
 “ dence for him. And this, they urge, must be  
 “ intended to be done by Practice and Threatnings:  
 “ And the rather, for that it had been prov’d, that  
 “ he did actually practice upon *Clay* in like man-  
 “ ner. And my Lord Chief Justice concluded,  
 “ that if the Witnesses for the King swore true,  
 “ as he saw no Colour of an Objection against  
 “ there Testimony, then *Oates* was the most per-  
 “ jur’d Villain upon the Face of the Earth.

Then the Court told the Jury they might drink  
 before they went from the Bar, but they did not  
 desire it; and having withdrawn a quarter of an  
 Hour, they return’d with this Verdict.

The Jury of-  
 fer’d to re-  
 fresh them-  
 selves.

*That the Defendant was Guilty of the Perjury* *Oates Convi-*  
*whereof he was Indicted.* *cted.*

The Chief Justice told them, he was satisfied in  
 his Conscience, they had given a Just Verdict, to  
 which the rest of the Judges Assented, and then  
 the Court arose.

*The Tryal of TITUS OATES in Easter-* *Page 447.*  
*Term, the 9th May, 1 Jac. II. 1685.*  
*upon an Indictment of Perjury, in the*  
*Court of King’s-Bench.*

THE Defendant appear’d in Person, and be-  
 ing advis’d to take Care of his Challenges, he  
 desir’d that it might be demanded of the Jurors  
 as they were call’d, Whether they were upon the  
 Grand

Grand Jury that found the Bill, but made no other Exception to them, and Twelve were Sworn, viz.

|                         |   |                   |
|-------------------------|---|-------------------|
| Sir Thomas Vernon, Kt.  | } | George Torriano,  |
| Nicholas Charlton, Esq; |   | Henry Loads,      |
| Thomas Langham, Esq;    |   | John Midgeley,    |
| Thomas Hartop,          |   | John Pelling,     |
| Francis Griffith,       |   | Thomas Short, and |
| John Kent,              |   | George Peck.      |

The Indictment for Perjury, in Swearing Ireland was in Town when he was an hundred Miles off.

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“ THE Indictment sets forth, That at a Sessions held at *Hicks's-Hall*, in the County of *Middlesex*, the 16th Day of *December*, in the 30th Year of King *Charles II.* *Thomas White*, alias *Whitebread*, late of the Parish of *St. Giles's* in the Fields, in the County of *Middlesex*, Clerk, *William Ireland*, *John Fenwick*, *Thomas Pickering*, of the same Parish and County, Clerks, and *John Grove*, of the same Parish and County, *Gent.* were Indicted for High Treason, in Conspiring the Death of the King, &c. And that at a Court of Goal-Delivery held at *Justice-Hall*, in the *Old-Baily*, in the Suburbs of the City of *London*. in the Parish of *St. Sepulchre*, in the Ward of *Farringdon Without*, the 17th Day of *December*, in the 30th Year aforesaid, the said *Ireland*, *Pickering* and *Grove*, were brought to their Tryal upon the said Indictment; and that the Defendant *Titus Oates*, late of the Parish of *St. Sepulchre* aforesaid, in the Ward aforesaid, Clerk, was produced as Witness on the behalf of our said late Lord the King, and being duly sworn to testify the Truth, the whole Truth, and nothing but the Truth, did Falsly, Voluntarily, and Corruptly Depose and Swear, and give in Evidence to the Jury who Tryed that Cause, That the said *William Ireland* was in Town (within the Cities of *London* and *Westminster*, or the Places adjacent to the said City, meaning) upon the first or second Day of *September*, in the Year 1678, whereas in Truth and in Deed the said *William Ireland* was not in Town, or within the Cities of *London* or *Westminster*, or the Places adjacent



“ cent to the same Cities, or either of them, upon  
 “ the first or second Days of *September*, in the  
 “ Year 1678: And so the aforesaid *Titus Oates*,  
 “ the aforesaid 17th of *December*, in the 30th  
 “ Year aforesaid, at the Tryal aforesaid, by his  
 “ own Act and Consent, and of his most wicked  
 “ Mind, falsely, voluntarily and corruptly, in Man-  
 “ ner and Form aforesaid, did commit voluntary  
 “ and corrupt Perjury.

And the Indictment further sets forth, “ That  
 “ at another Session held at *Hicks's-Hall*, in the  
 “ County of *Middlesex*, on *Thursday* the 12th of  
 “ *June*, in the 31st Year of the late King *Charles*  
 “ the Second, *Thomas White*, alias *Whitebread*,  
 “ late of the Parish of *St. Giles's*, in the County  
 “ of *Middlesex*, Clerk, *John Fenwick*, *William*  
 “ *Harcourt*, alias *Harrison*, *John Gaven* and *James*  
 “ *Cocker*, of the same Parish and County, Clerks,  
 “ were Indicted of High Treason, for Compas-  
 “ sing and Imagining the Death of the said King.  
 “ And that at a Court of Goal Delivery, held by  
 “ Adjournment, for the County of *Middlesex*, at  
 “ *Justice-Hall* in the *Old Baily*, on *Friday* the 13th  
 “ Day of *June*, in the 31st Year aforesaid. The  
 “ said *Thomas White*, alias *Whitebread*, *John Fen-*  
 “ *wick*, *William Harcourt*, alias *Harrison*, *John*  
 “ *Gaven*, and *Anthony Turner*, were brought to  
 “ their Tryals upon the said last mentioned In-  
 “ dictment; and the said *Titus Oates* was produc'd  
 “ as a Witness on the part of the King, and being  
 “ duely sworn to testify the Truth in the Issue  
 “ last mentioned, by his own proper Act and  
 “ Consent of his most wicked Mind, falsely, vo-  
 “ luntarily, and corruptly, did depose and swear,  
 “ and give in Evidence to the Jury, that *William*  
 “ *Ireland* (one *William Ireland*, then before con-  
 “ victed and Executed for High Treason mean-  
 “ ing) took his Leave of him the said *Titus Oates*,  
 “ and others, at the Chamber of the said *Ireland*,  
 “ then being in *Russel-street* within the City of  
 “ *Westminster*, between the 8th and 12th Days of  
 “ *August*, in the Year 1678: Whereas in Truth,  
 “ and in Deed, the said *Wm. Ireland* did not take  
 “ his Leave of the said *Titus Oates*, or any other  
 “ Per-

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" Persons whatsoever, at the Chamber of the  
 " said *William Ireland*, then being in *Russel-street*  
 " afore said, between the said 8th and 12th Days  
 " of *August*, in the Year 1678. And so the said  
 " *Titus Oates*, upon the said 13th Day of *June*, at  
 " the Tryal afore said, by his own proper Act and  
 " Consent, and of his most wicked Mind, falsely,  
 " voluntarily, and corruptly, in Manner and Form  
 " afore said, did commit voluntary and corrupt  
 " Perjury, to the Displeasure of Almighty God,  
 " in Contempt of the Laws, to the evil Example  
 " of others, and against the King's Peace, &c.

Proclamation was made for Evidence as usual;  
 and Mr. *Phipps* open'd the Indictment, and Mr.  
*Attorney* shew'd the Nature of the Evidence.

Then the Records of the two Tryals of *Ireland*  
 and the Five Jesuits were produc'd and prov'd, by  
 Mr. *Swift*:

And Mr. *Harriot* was Sworn, and Mr.  
*Waterhouse*.

Sir R. *Sawyer*,  
 Att. General.

*Att. Gen.* Do you remember what Testimony  
*Oates* gave at the Tryal of the Five Jesuits, con-  
 cerning *Ireland's* being in Town.

Evidence that  
*Oates* swore at  
 the Tryal of  
 the Five Jesu-  
 its, that *Ire-*  
*land* was in  
 Town be-  
 tween the 8th  
 and 12th of  
*August*, 78.  
 † Mr. *Finch*.

Mr. *Harriot*. My Lord, He did positively  
 swear, that Mr. *Ireland*, the late Jesuit, did take  
 Leave of him and others at the said *Ireland's*  
 Chamber in *Russel-street*, betwixt the 8th and 12th  
 of *August*, 1678. I was Foreman of that Jury.

† *Sol. Gen.* What say you, Mr. *Waterhouse*?

*Waterhouse*. I was of that Jury too. *Oates* de-  
 pos'd, That Mr. *Ireland* took his Leave of him  
 the 12th of *August*. My Ld. Chief Justice *Scroggs*  
 then ask'd him, Are you sure it was the 12th?  
 And then he said he would not be positive it was  
 the 12th; but between the 8th and 12th it was,  
 I am positive upon my Oath.

*Oates*. Mr. *Harriot*, Did I swear that he took  
 his Leave of me, or I took my Leave of him?

Mr. *Harriot*. You swore that *Ireland* took his  
 Leave of you and others.

*Oates*. Did Mr. *Harriot* take Notes at the Tryal?

Mr. *Harriot*. Yes, I did, And it was my Man-  
 ner in all Tryals I was concern'd as a Juryman,  
 to read the Tryals strictly over when they were  
 printed

Printed, and compare them with my Notes: And this I found to be in the printed Tryal, according to my Notes.

*Oates.* Mr. *Waterhouse*, You did not take Notes; Pray, How come you to remember that I was so positive, as to the Time betwixt the 8th and 12th of *August*.

Mr. *Waterhouse*. Because my Lord Chief Justice made a Stop when you said it was the 12th of *August*, and bid you consider; and you consider'd it, and did affirm positively, That it was between the 8th and 12th of *August*.

Mr. *Foster* was Sworn.

*Sol. Gen.* Pray tell what you remember Mr. *Oates* swore at Mr. *Ireland's* Tryal, about Mr. *Ireland's* being in Town.

Mr. *Foster*. I was one of the Jury at the Tryal of Mr. *Ireland*, *Pickering* and *Grove*; and Mr. *Oates* and Mr. *Bedloe* were sworn as Witnesses for the King: And Mr. *Bedloe* depos'd, That there was a Meeting at *Harcourt's* Chamber; and *Ireland*, *Pickering* and *Grove* were there; and that this was the latter End of *August*. Mr. *Ireland* made his Defence, and endeavoured to prove, That he was not in Town from the Beginning of *August* to the Middle of *September*, and brought several Witnesses. But upon his denying to be here the latter End of *August*, Mr. *Oates* did come and swear; *I am certain, (says he) that the 1st or 2d of September he was in Town; for then I had of him Twenty Shillings.*

That he swore at *Ireland's* Tryal, that *Ireland* was in Town the 1st or 2d of *September*.

*Oates*. Was I positive, that he was here in Town the 1st or 2d of *September*.

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Mr. *Foster*. You were positive to the 1st or 2d; I have it in my Notes.

Mr. *Byfield*, another of *Ireland's* Jury, was Sworn.

*L. C. J.* What did *Oates* swear?

Mr. *Byfield*. Mr. *Oates* did positively assert, That *Ireland* was here in Town the first or second of *September*; and to confirm it, he said he receiv'd of him Twenty Shillings.

Sir G. *Jeffries*

Then

Evidence that  
Mr. Ireland  
was not in  
Town at the  
Times Oates  
had sworn he  
was.

Then Mrs. *Ann Ireland* was Sworn:

*Sol. Gen.* Pray, Where did you take your Leave of your Brother, Mr. *William Ireland*, who was Executed in Summer, 1678. and When?

*A. Ireland.* I took my Leave of him the beginning of *August*; it was on a *Saturday* Morning, the 3d of *August*, at my own Lodging in *Russel-street, Covent-Garden*.

*L. C. J.* How come you to remember so particularly that it was then?

*A. Ireland.* Because, upon *St. Ignatius's Day*, we were invited to Mr *Gifford's*, at *Hammer-smith*, my Mother, and my Brother, and I, to stay all Night; but my Brother come Home, he said, he could not stay, because he was to go into the Country on *Saturday*. I ask'd him, Why he would set out on a *Saturday*? and he said, he would go to *Standen*, where he should meet with my Lord *Aston* and his Family, and have an Opportunity to go with him into *Staffordshire*.

*Att. Gen.* What Day of the Week, is *St. Ignatius's Day*?

*A. Ireland.* *St. Ignatius's Day* was on a *Wednesday*.

*L. C. J.* What Day of the Month is *St. Ignatius*?

*Att. Gen.* We have no such Saint in our Almanack.

*Lord Petre.* *St. Ignatius's Day* is always the last Day of *July*, my Lord.

*Oates.* She is not positive, that he went out of Town the 3d of *August*.

*Att. Gen.* Yes, she is, for she says she was, the *Wednesday* before, which was *St. Ignatius's Day*, with him a little Way out of Town. Pray, Mrs. *Ireland*, When did you see him again?

*A. Ireland.* He came to Town again a Fortnight before *Michaelmas*: It was that Day Fortnight before *Michaelmas*, that *Michaelmas Day* fell on.

*L. C. J.* Pray where did he lodge when he came to Town?

*A. Ireland.* He us'd always to lodge at the same Place where we did; and in the mean time, while he



he was absent, my Mother lent one Mrs. Eggleston his Lodgings.

*L. C. J.* When did she enter upon his Lodging?

*A. Ireland.* She came down upon her Maid's falling Sick: It was in a short time after he went out of Town, as I remember.

*Oates.* Did she give this Evidence at any of the former Tryals?

*A. Ireland.* I gave the same Evidence at my Brother's Tryal; and was in Court at the Tryal of the five Jesuits, but was not examin'd.

*Oates.* I desire to ask her, What Religion she is of? and, Whether her Name be *Ireland* or *Ironmonger*?

*A. Ireland.* I am a Roman Catholick, my right Name is *Ironmonger*; but, because of my Brother's Profession, he went by the Name of *Ireland*, and for his sake, we go by that Name too.

*Oates.* By what Name did you give Evidence at *Ireland's* Tryal?

*A. Ireland.* By the Name of *Ireland*.

*Mrs. A. Ireland,* the Mother, was Sworn.

*Att. Gen.* When did your Son go out of Town?

*Mrs. Ireland.* It was the 3d of *August*, the same Year he was try'd.

*Sol. Gen.* What time did he return out of the Country?

*Mrs. Ireland.* The 14th of *September*.

*Oates.* Was she a Witness at her Son's Tryal? or the Tryal of the five Jesuits?

*Mrs. Ireland.* I was a Witness at my Son's Tryal, but they would not suffer me to speak half so much, they would hardly let me speak at all; I was not at the five Jesuits Tryal.

*Mrs. Duddle,* and *Mrs. Quino* were sworn.

*Sol. Gen.* *Mrs. Duddle,* Do you remember when *Mr. Ireland* went out of Town, in the Year 78?

*Duddle.* It was upon the 3d of *August*: He went out of Town two or three Days before, upon a Holyday, for Recreation. It was *St. Ignatius's Day*, and he lay out of Town one Night then; and he came and staid but two Nights after, and went out of Town upon the *Saturday*.

*L. C. J.*

Page, 456.

*L. C. J.* Did he stay out of Town one Night?

*Duddle.* Yes, he staid out of Town all Night.

*L. C. J.* This Witness contradicts the other.

*Duddle.* I do not say he, but I'm sure his Sister and the Company staid out that Night; and I remember he went the 3d Day after, which was *Saturday*. And *Mr. Jennison*, and *Sir Miles Wharton*, came in a Coach about three Weeks after, and ask'd for him; and they gave them an Account, that they had not heard from him since he went. And I remember well, he did not come to Town again, till a Fortnight before *Michaelmas*.

*L. C. J.* How can you tell that?

*Duddle.* My Lord, I was almost every Night in the Room where he us'd to lie; there lay one *Mrs. Egglestone* there, that I knew: Her Maid fell Sick, and she chang'd her Chamber, and lay there all the time he was out of Town.

*Oates.* My Lord, I humbly conceive, she having once swore false—

*L. C. J.* Ay, but she immediately recollected herself.

*Oates.* This is a Roman Catholick, I suppose.

*Duddle.* Yes, I am a Roman Catholick.

*Oates.* Were you a Witness at any of the Tryals at the *Old Bailey*?

*Duddle.* I was in the Court, but was not call'd.

*Sol. Gen.* What say you, *Mrs. Quino*? When did *Mr. Ireland* go out of Town?

*Quino.* It was the 3d of *August*, on a *Saturday*; I know it by the same Reason that she speaks. I mark'd that other Day he went out of Town; and he came again, and his Mother staid there that Night. And I know he went out of Town on *Saturday* Morning, for my Husband was his Tailor, and he had somewhat to alter in his Cloaths; and I brought it, and he had his Boots on, and went out of the House, to go out of Town, as I take it.

The Lord *Aston* was Sworn.

Lord *Aston* deposes that *Ireland* came to his House at *Standon*, the 3d of *August*.

*Sol. Gen.* Pray, my Lord, give the Court an Account when *Mr. Ireland* came to your House.

Lord *Aston.* My Lord, being in Town, I was spoke to, and desir'd, that *Mr. Ireland* might go in my Company into *Staffordshire*, which I agreed to;

to; I went out of Town, as I remember, the latter end of *July*, 78. and Mr. *Ireland* came to my House, at *Standen* in *Hertfordshire*, on the 3d of *August*, as I remember, it was on a *Saturday* in the Evening: He staid at *Standen* till *Monday*, and on *Monday* he went, in my Company, to *St. Albans*, which was the 5th of *August*. There I met my Brother and Sister *Southcoat*, and from thence, in four Days, we went to my House at *Tixhall*.

*L. C. J.* Did Mr. *Ireland* travel with you all the Way to *Tixhall*? Page 457.

*Lord Aston.* I make no doubt of it, I would pawn all I have in the World upon it, only I cannot swear it, because I have it not in my Notes, as I have those two other Days.

*L. C. J.* My Lord, you say you have a general Apprehension, that he did go with you to *Tixhall*, pray did he come to *Standen* for that purpose?

*Lord Aston.* I had no Business with him at all, but he desir'd the opportunity of going down in my Company into *Staffordshire*.

*L. C. J.* Did you see him within four or five Days after you came to *Tixhall*?

*Lord Aston.* To name particular Days, I cannot; but that I saw him several Days at *Tixhall*, I am sure.

*Oates.* Was this Nobleman at the Tryal of the Five Jesuits, or *Ireland's* Tryal?

*Lord Aston.* No, I was not.

*Oates.* Was the *Ireland* that was Executed, the same *Ireland* my Lord speaks of?

*L. C. J.* I suppose you'll produce some other *Ireland*, Mr. *Oates*, if it was not the same.

*Att. Gen.* Was it this Mrs. *Ireland's* Brother, that was here a Witness?

*Lord Aston.* He was so reputed.

*L. C. J.* If any Body should ask me if you were the same *Oates* that was at *St. Omers*? I should say, I heard so; and it would be very good Evidence, unless another were produc'd.

*Oates.* My Lord, I submit; but I would know if his Lordship remembers, that he saw Mr. *Ireland* within eight or ten Days after he arrived at *Tixhall*?

Evidence of  
Ireland's going  
into Stafford-  
shire with the  
Lord Aston, in  
the beginning  
of August, 78.

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Lord Aston. I cannot say any thing as to that.

Sir Edward Southcoat was Sworn.

Sir Ed. Southcoat. The 4th of August I saw Mr. Ireland at my Lord Aston's. Upon Monday, the next Day, we set out for Tixhall, and we came to the Bull Inn at St. Albans, that Night. Mr. Ireland was with us, I remember very particularly, for it was hot Weather, and my Lord invited him into the Coach that Day, and they had some particular Discourse. And I remember Mr. Ireland was with us all the Journey, by a pretty Horse that he rode upon, and a Dispute that I had with my Cousin, who should buy him. From St. Albans, we went, the next Day, to Northampton, and lay at the Sign of the George: It was Sir William Farmer's House, but made use of then for an Inn, the Town being burnt down. The next Night we lay at the Bull at Coventry; and from thence, on Thursday, we came to my Lord Aston's, at Tixhall.

Att. Gen. Pray how long did Mr. Ireland stay with you at Tixhall, at my Lord Aston's?

Sir Ed. Southcoat. He staid with us there, till the Tuesday after; and then we began our Journey from Tixhall, to St. Winifred's Well in Wales. On Tuesday Night we lay at the Holy Lamb at Nantwich, and the next Day we reach'd St. Winifred's Well, and lay at the Star, which is the great Inn there. Mr. Ireland was there with us: We staid but one Day at Holy-Well, and went the next to Chester, and lay there only one Night, and came the next Day to Tixhall again.

Att. Gen. Which must be Friday the 16th of August?

Sol. Gen. Was Mr. Ireland with you all the while, in this Journey to Holy-Well?

Sir Ed. Southcoat. Every Day, I remember it very perfectly.

Att. Gen. After you return'd to Tixhall, How long did he stay there?

Sir Ed. Southcoat. I remember he was there several Days, but I can fix only upon two certainly: One of them was at Mr. Chermynd's Horse-Race with Sir Henry Gough, and the other was one Thursday,



day, upon the Bowling Green at *Tixhall*, where there was a particular Company. Page 459.

*L. C. J.* Did you come home, back again, with *Mr. Ireland*?

*Sir Ed. Southcoat.* Yes, my Lord, we did: We set out upon a *Monday*, which was either the 9th or 10th of *September*. The first Night, we came to the *Bullin Coventry*; the next Night, to the *Altar-stone* at *Banbury*; the third Day, to *Agmondesham* in *Buckinghamshire*; and the fourth Day, to my Father's House, by *Kingston*, in *Surrey*. And when we came to my Father's, my Brother bought *Mr. Ireland's* Horse of him; and, I think, *Mr. Ireland* went on the *Saturday* following to *London*. I remember my Brother lent him the Horse to Town, after he had bought him, and sent a Man with him to bring it back again.

*Att. Gen.* That *Saturday*, my Lord, makes it come just to the 14th of *September*, and is the very Day Fortnight before *Michaelmas*.

*Oates.* Did this Gentleman see *Ireland* all *August*, and till the 14th of *September* every Day?

*Sir Ed. Southcoat.* I cannot be positive to any particular Days, from the time we came from *Holy-Well*, till our setting out from *Tixhall* for *London*.

*Oates.* Was *Sir Edward* a Witness at the Tryal of *Ireland*, or the Five Jesuits?

*Sir Ed. Southcoat.* I was not at *Ireland's* Tryal, but at the Jesuits Tryal, I gave the same Evidence I do now.

*Mr. John Southcoat* was Sworn.

*L. C. J.* Is this he that bought the Horse of *Mr. Ireland*?

*J. Southcoat.* Yes, my Lord; I met with *Mr. Ireland* on *Monday* the 5th of *August*, at the *Bull* at *St. Albans*, with my Lord *Aston*: I came thither that Day with my Father and Mother, and the next Day we came to the *George* at *Northampton*, which was *Sir William Farmer's* House, but us'd then for an Inn, the Town being burnt. The next Night we lay at the *Bull* at *Coventry*, and on *Thursday* Night we came to my Lord *Aston's* at *Tixhall*. We staid there *Friday*, *Saturday*, *Sunday*, and *Monday*, and *Mr. Ireland* was there all the

time. On *Tuesday* we set out for *Holy-Well* in *Flintshire*, and lay that Night at the *Lamb* at *Nantwich*; and the next Day we went through *Chester*, to *Holy Well*, and return'd the Day after, about Noon, to *Chester*, and lay there all Night: And the next Night, being *Friday*, we return'd to *Tixhall*.

*L. C. J.* Was Mr. *Ireland* with you in both those Journeys?

*J. Southcoat.* Yes, my Lord, he was all the while, I saw him, and rode with him every Day.

*L. C. J.* Did Mr. *Ireland* stay with you at *Tixhall* till you came away?

*J. Southcoat.* No, my Lord, he did not. I remember Mr. *Ireland* came with us from *Tixhall* the 9th of *September*, and we came home in four Days. It was upon a *Thursday* we came home, and Mr. *Ireland* went to *London* the *Saturday* after.

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*Sol. Gen.* You lent him the Horse you bought of him, I think.

*J. Southcoat.* Yes, I did, to *London*; and sent my Man with him to bring him back.

*Oates.* Is Mr. *Southcoat* sure that *Ireland* was in his Company from the 5th of *August*, to the 16th?

*J. Southcoat.* Yes, every Day; I remember it very well.

*Oates.* Was he at the Tryals of *Ireland*, and the Five Jesuits?

*J. Southcoat.* No, I was not at either.

*Harrison* was Sworn.

*Sol. Gen.* Pray give an Account, When, and Where, you saw Mr. *Ireland*?

*Harrison.* On *Monday*, the 5th of *August*, 1678. I went with my Master, Sir *John Southcoat*, and his Lady, to *St. Albans*, with a Coach and four Horses; for an old Servant of my Masters had a pair of Horses, which we made use of then. At *St. Albans*, we met my Lord *Aston* and Mr. *Ireland*. The next Morning, my Lord *Aston*, and my Master, and Lady, went towards *Tixhall*: And I rode by, in Mr. *Ireland's* Company, and came acquainted with him that Day. At Night we came to *Northampton*, and Inn'd at a Stone House, that was us'd for an Inn, the Town being Burnt. The next Night

Night we came to *Coventry*, and on *Thursday* to *Tixhall*; where we staid till *Tuesday*, and then set out for the *Holy-Well*, and lay that Night at *Nantwich*. On *Wednesday* we came to the *Holy-Well*, and staid there one Night, and on *Thursday* came to *Chester*; and I parted with him upon the *Friday*, at *Chester*. It was the same *Ireland* that was Try'd: I saw him at his Tryal, though he look'd a little disorder'd, it was the same Man.

*Sol. Gen.* When did you see him again, after you left him in *Chester*?

*Harrison.* I saw him several times at *Tixhall*; I saw him at the Bowling Green upon a *Thursday*, and I saw him at the Horse-Race between Mr. *Chetwynd* and Sir *Henry Gough*, but I can't say what Days of the Month.

*Att. Gen.* Did you come up with your Master, the 9th of September?

*Harrison.* Yes; And I have a Note wherein I set down my Charges, which I kept in my Almanack ever since. My Lord *Aston* sent his Coach with us to *Banbury*, where my Master's Coach was to meet him; but we got no farther than *Coventry* the first Night. The next Night, being *Tuesday*, we lay at the *Altar-stone* at *Banbury*. On *Wednesday* we came to *Agmondesham*, where we were ill Lodg'd. The next day we baird at *Uxbridge*, and came to *Kingston*, and so to Sir *John's*, upon the *Thursday* Night. On *Friday* Mr. *Ireland* sold his Horse to Mr. *John Southcoat*, my Master's Son; and on *Saturday* I went with Mr. *Ireland* towards *London*; he rode the Horse he sold my Master, Mr. *Southcoat*. When we came to Town, we took Water; and I carried a little Bag of Mr. *Ireland's*, and Landed with him at *Somerset-House*. From thence we went to Mr. *Ireland's* Lodging in *Russel-street*; and he went up Stairs, and two Women met him, and welcom'd him Home. Said they, *We are glad you are come, we thought we had lost you, because we never heard from you all this while.* This was *Saturday* the 14th of September, and I did not see him again, till his Tryal at the *Old Baily*.

*Att. Gen.* Are the particular Days incerted in his Paper?

*L. C. J.* No, they are not, *Mr. Attorney.*

*Harrison.* I could not Write well; it was only *Memorandums* for my self.

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*L. C. J.* This Account agrees with what the Women said, that he came on *Saturday*, a Fort-night before *Michaelmas*: Thus far it is as clear as the Sun at Noon-Day.— I must tell you, *prima facie*, it is so strong an Evidence, that if you have any Sense in the World, you must be concern'd at it: Upon my Faith, I have so much Charity for you, as my Fellow Creature, as to be concern'd for you.

*Oates.* 'Tis not two Straws matter, whether you are or no, I know my own Innocence.

*L. C. J.* Thou art the most obstinately hard-ned Wretch, that ever I saw.

*Oates.* Pray let it be remembred, what Credit he had at *Mr. Ireland's* Tryal: You may think what you will, my Lord, but these Popish Traitors will swear any thing, and suborn Witnesses upon Witnesses against me, to discredit the Popish Plot.

*J. Within.* We must not suffer this Behaviour.

*L. C. J.* Let him keep within Bounds, and we'll hear him; but if he think by his Impudence to out-face Justice, we will not bear it. Go on *Mr. Attorney.*

*Mr. George Hobson* was Sworn.

He depos'd, that he liv'd at my Lord *Aston's*, and that *Mr. Ireland* came to *Standen*, the 3d of *August*, in the Evening; and that on *Monday*, the 5th, he set out with them to *Tixhall*; and gives the same Account of the several Stages to *Tixhall* and *Holy-Well*, as the other Witnesses had done: And says, That from the 3d of *August* till the 16th, *Mr. Ireland* continued with them, for he saw him every Day. That he did not see him afterwards till he came to *Tixhall* again, the 26th of *August*.

*Att. Gen.* How long, after the 26th of *August*, did you see him at *Tixhall*?

*Hobson.* The 9th of *September*, when I saw him set out for *London*,

*L. C. J.*



*L. C. J.* Was this the same *Ireland* that was afterwards Try'd?

*Hobson.* I believe it was, my Lord; but I was not at the Tryal.

*George North* was Sworn.

He depos'd, That Mr. *Ireland* was at my Lord *Aston's* House at *Standen* in *Hertfordshire*, the 4th of *August*, and that on the 5th, they went to *Tixhall*, as the other Witnesses had depos'd, where they arriv'd the 8th; and that from the 8th to the 13th, he saw Mr. *Ireland* every Day at *Tixhall*, when he went to *Holy-Well*. That he saw him several times afterwards at *Tixhall*, and that the 9th of *September* he came thither, in order to go with Sir *John Southcoat* to *London*.

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*Oates.* I desire to know, How he comes to remember it so well? and, If he were at *Ireland's* Tryal? and, What Religion he is of?

*North.* I waited at my Lord's Table, and saw Mr. *Ireland* every Day at Dinner with him; but I was not at the Tryal. As to my Religion, I am a Roman Catholick.

*Richard Ingletrap* was Sworn.

He depos'd, that he was an Hackney Coach-man, and was order'd to be at *Standen* the first of *August*, to wait on my Lord *Aston* to *Tixhall*. That on the 3d, Mr. *Ireland* came to *Standen*, and on *Monday* they went their Journey, as the other Witnesses had deposed: And that on the 8th, they arriv'd at *Tixhall*, and Mr. *Ireland* continued with them all the Journey. That Mr. *Ireland* staid at *Tixhall* till *Tuesday* after they came thither; but the Deponent said, he could not say he saw him every Day, during that time.

*Oates.* I desire to know, What Religion he is of? and, If he was at the former Tryals?

*Ingletrap.* I am a Protestant: I was not at the Tryals of *Ireland*, or the Jesuits.

*Andrew Wetton* was Sworn.

He depos'd, that Mr. *Ireland* came to *Tixhall* the 8th of *August*, and staid there till the 13th. That the Deponent went with him, and the Company, to *Holy-Well*, and look'd after Mr. *Ireland's* Horse in the Journey: And, that when they return'd to

A a 4

*Tixhall*,

*Tixhall*, Mr. *Ireland* gave him a Shilling and two Sixpences. That between the Time they return'd from the *Holy-Well*, and the Day they set out for *London*, which was the 9th of *September*, he saw Mr. *Ireland* several times, but could not remember the particular Days.

*L. C. J.* When did he return from *Holy-Well*?  
*Wetton*. It was the 16th, upon a *Friday*.

*Thomas Sawyer* was Sworn.

He depos'd, that Mr. *Ireland* came to *Tixhall* the 8th, and staid there till the 13th, and then he went away to *Holy-Well*, as the Deponent was told. That *Ireland* return'd to *Tixhall* again, with the old Lady *Aston*, on *Friday* the 16th; and that the 9th of *September*, he set out, with Sir *John Southcoat*, for *London*.

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*L. C. J.* Was he at *Tixhall*, between the 16th of *August* and the 9th of *September*?

*Sawyer*. He was once or twice there, I can't remember the particular Times.

*N. B.* The two last Witnesses were Protestants.

*Mrs. Frances Allen* was Sworn.

She depos'd, that she was Servant to my Lord *Aston*, when Mr. *Ireland* came to *Tixhall*, the 8th of *August*; that he continued at *Tixhall* to the 13th, and then went to *Holy-Well*; and return'd to *Tixhall* the 16th, and on the 17th he went away. That she was the Person that look'd after Mr. *Ireland*'s Chamber, and wash'd his Linnen. And that which made her, remember the time more perfectly still, was, That she took Notice, one *Sarah Pain* swore, at the Tryal, he was in Town the 10th, and the Deponent had seen him, on *Saturday* and *Sunday*, being the 10th and 11th, in his Chamber at *Tixhall*. That she remembers his going from *Tixhall* the 17th, because she carried him his Cloaths into his Chamber, that he was to take with him. *This Witness was a Protestant too.*

*Mrs. Jane Harwell* was Sworn.

*Mrs. Harwell* deposes *Ireland* was at her House at *Wolverhampton*, in *August* and *September*, 78.

*Sol. Gen.* When did Mr. *Ireland* come to your House, in the Year 78?

*Harwell*. He came to my House at *Wolverhampton*, upon a *Saturday*, being the 17th of *August*, 1678. He Supp'd with me that Night, and, I think, lay

lay at my House every Night, till the 26th. On the 19th, after Dinner, I went with him, about a good part of the Town of *Wolverhampton*; and upon *Friday* following, being the 23d, he went a little way out of Town, to a Fair, and return'd the same Day. He was at my House the next Day, being *Bartholomew Day*; as also the next Day, which was *Sunday* the 25th: And on *Monday* the 26th, he went away; I think, he said, he went to *Tixhall*. He return'd to me the 4th of *September*, and staid there on *Thursday* and *Friday*, the 5th and 6th, and on the 7th he went away from me for good and all.

*Att. Gen.* When he came to your House the 4th of *September*, from whence did he say he came?

*Harwell.* He said he came from *Boscobel*, and *Black Ladies*, and that Way. And I remember, that upon hearing, the 2d of *September*, that Mr. *Ireland* would be at *Boscobel* that Night, I wrote to him to make *Madam Dormer* a Visit, for I knew she would be glad to see him; and he afterwards told me he had been there.

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*Oates.* Was this Gentlewoman at *Ireland's* Tryal?

*Harwell.* No, my Lord; but I heard the 19th of *December*, that he was Try'd the 17th, and that Mr. *Oates* had sworn he was in Town, when we could prove he was in *Staffordshire*. And at my own Charge, I sent away an Express to a Friend in *London*, that Mr. *Ireland* was falsely Accus'd; and sent a Petition to his Majesty, that we might bring Witnesses to prove Mr. *Ireland* was in *Staffordshire*, when *Oates* swore he was in Town: And the King staid the Execution five Weeks, but at length he was Executed.

She procures  
Mr. *Ireland's*  
Execution to  
be respited.

Mr. *William Ruston* was Sworn.

He depos'd, that he saw Mr. *William Ireland* at *Wolverhampton*, in the County of *Stafford*, from the 18th of *August*, 78, to the 25th; except on the 23d, when Mr. *Ireland* went to *Litchfield*. And that he Lodg'd at Mr. *Giffords*, or Mrs. *Harwells*.

*Oates.* I desire to know, Whether this Gentleman were at *Ireland's*, or the Jesuits Tryal? and, What Religion he is of?

*Ruston.*

*Ruston.* I was not at either of those Tryals. I am a Catholick.

*Mrs. Winford* was Sworn.

She depos'd, that she saw *Mr. Ireland* at *Wolverhampton*, in 78, on the 18th, 19th, 20th, 22d, 23d, 24th, and 25th Days of *August*; sometimes at *Mrs. Harwell's*, and sometimes at her Father's House, who liv'd in that Town.

*Oates.* How comes she to remember those Days so particularly?

*Winford.* Because *St. Bartholomew's Day*, the 24th of *August*, was the *Saturday* after he came to Town; and the first Day I saw him, was the *Sunday* before.

*Oates.* She was a Witness at *Whitebread's* Tryal, but was not believ'd.

*Mr. William Stanley* was Sworn.

*Stanley.* On *Sunday* and *Monday*, the 18th and 19th of *August*, 78. *Mr. Ireland* was at my House at *Wolverhampton*; I believe I saw him the 20th and 21st, but *Thursday* and *Friday* I cannot say I did; for he went upon one of them to *Litchfield*; but upon *Saturday* and *Sunday* I'm sure I saw him.

*Att. Gen.* How came you to remember when you saw him?

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*Stanley.* I buried a Child on *Sunday* the 18th of *August*, and he came to my House in the Afternoon, and I entertained him with those Things I had provided for my Friends at the Funeral. And on *Monday*, there being a Wake, the young People went to the Wake, and left *Mrs. Harwell* alone; and so she came with *Mr. Ireland* to my House, where I entertained him as I did the Day before.

*Mrs. Dorothy Purcell* was Sworn.

She depos'd she saw *Mr. Ireland* at *Wolverhampton*, the 18th, 19th, 20th, 21st, 22d, and 23d Days of *August*, 78. And she remembered it, because these were the Days before *Bartholomew Eve*.

*Oates* said, He did not doubt but she was a Papist, he need not question her about it.

*Mr. Scott* was Sworn.

He depos'd, that he look'd after *Mr. Ireland's* Horse when he was at *Wolverhampton*: That he came thither on a *Saturday*, and was there a Fortnight



night off and on; he thought it was in *August*, but he could not be positive as to the Time he was there.

Mr. *John Stamford* was Sworn.

He depos'd, that in the Year 1675. he went to *St. Omers* to fetch over two young Gentlemen that were Students there; and then he became acquainted with Mr. *Ireland*, who was Procurator of the Jesuits there. That in *August*, 78. he saw him at *Wolverhampton* upon the Sunday after the Assumption of our Lady, which is always the 15th of *August*. That he saw him every Day the following Week, except one, when he went to *Litchfield*.

*Oates*. I desire to know, What Religion? and, What Profession he is of?

*Stamford*. I am a Roman Catholick, but not a Jesuit, as the Doctor supposes, for I have a Wife and Children.

Mrs. *Catherine Fowler* was Sworn.

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She depos'd, that on Sunday the 17th of *August*, Mr. *Ireland* came to Mrs. *Harwell's*, her Mother's House, in *Wolverhampton*, and staid there till that Day Se'night, only he went to *Litchfield* Fair on the Friday. That Mr. *Ireland's* Tryal being about half a Year after, and Mr. *Oates* swearing he was in Town between the 8th and 12th of *August*, she recollected that that was the very Month Mr. *Ireland* was at *Wolverhampton*, and thereupon concluded Mr. *Oates* had sworn false; and that this was the Reason of her remembering the Thing now, so long after.

*Oates* demanded, If she were Related to one Mr. *Jennison*?

She said, she was sorry she must own she had such a Relation.

Mr. *Gifford* was Sworn.

He depos'd, that he saw Mr. *Ireland* at *Wolverhampton*, the 17th of *August*, 78, and that he continued there to the 26th, and the Deponent saw him every Day: And that the Deponent was not examin'd, either at *Ireland's*, or the Five Jesuits Tryals.

Mrs.

## The T R Y A L of

Mrs. *Elizabeth Gifford* was Sworn.

She depos'd Mr. *Ireland* came to *Wolverhampton* the 17th of *August*, 78, and staid there till the 26th. That she saw him every Day he was there, but two, when she went to a Wake hard by, and which occasions her remembring the Time so exactly. That she was examin'd at the Tryal of the Five Jesuits, but not at Mr. *Ireland's*.

Mrs. *Elizabeth Keeling* was Sworn.

She depos'd, that the 17th of *August* before the Plot, Mr. *Ireland* came to her Mistress, Mrs. *Harwell's* House, in *Wolverhampton*; that she saw him there till the *Monday*, when she was sent for to her Mothers Burying. That that Day, she left Madam *Dormer* at Dinner with him; that on *Thursday*, the Deponent return'd home again, and heard Mr. *Ireland* talk in his Chamber, but did not see him. That on *Friday* he went abroad, and that on *Saturday* she saw him, and he continued there till *Monday* Morning, and then went away. That on *Wednesday*, the 4th of *September*, he return'd again, and staid till *Saturday* the 7th, and then went from *Wolverhampton*, and she saw him no more.

Mr. *Richardson* was Sworn.

He depos'd, that he saw Mr. *Ireland* the 19th of *August*, 78, at *Wolverhampton*, at a Wake: That he did not know him then, but Mrs. *Harwell* told the Deponent, afterwards, that it was he. He thought she told him so before Mr. *Ireland* was apprehended. The Deponent said, as to his Religion, he was of the Church of *England*, and by Trade an Apothecary, in *Wolverhampton*.

Mrs. *Eleanor Graves* was Sworn.

She depos'd, that on the 22d of *August* was six Years, she Din'd and Supp'd with Mr. *Ireland*, at her Uncle *Winfords* in *Wolverhampton*: That on the 23d, which was *Bartholomew Eve*, she and her Uncle went with Mr. *Ireland* to *Litchfield*; and that she saw him the 25th, which was the *Sunday* after: And that he lay at Mrs. *Harwell's* while he staid at *Wolverhampton*.

Oates. How does she know it was the same *Ireland* that was Try'd?

Mrs. *Graves*.

Mrs. *Grades*. It was the same *Ireland* that they said was try'd.

As to her Religion, she said she was of the Church of *England*.

Sir *Thomas Whitegrave* was Sworn.

He depos'd, That on *Thursday* the 29th of *August*, before the Popish Plot, he saw Mr. *Ireland* on *Tixhall* Bowling-Green, and he told him he was to go home that Night with Sir *James Simmons* and Mr. *Heveningham*; and that they told the Deponent afterwards, he went on *Saturday* to *Hilder-sham*, and from thence on *Monday* following towards *Boscobel*; that some Time after they heard Mr. *Ireland* was accus'd of being in a Plot with the Papists, and the Deponent and several others who were in the Commission of the Peace, reflected on the Time that *Ireland* was in the Country, and were a little concern'd because he had been at particular Places in their Neighbourhood among the Roman Catholicks; that the Deponent was sent for to *London*, but not being *subpœna'd*, and being a Justice of Peace, he did not think fit to leave the Country at that Time.

Oates. How long had this Gentleman been acquainted with Mr. *Ireland*?

Sir *Tho. Whitegrave*. I never saw him before or since.

Mr. *Wm. Fowler* was Sworn.

He depos'd, That he saw Mr. *Ireland* at a Horse-Race at *Etchinghill* in *Staffordshire*, upon the 27th of *August*, 78, and that the Race was between Sir *Henry Gough* and Mr. *Chetwynd*. That he saw him also upon the 29th of *August* on *Tixhall* Bowling-Green, and he discours'd with Sir *Tho. Whitegrave* there. That the Deponent also saw him the 10th of *August* before, at my Lord *Aston's*, at *Tixhall*. As to the Deponent's Religion, he said he was a Roman Catholick.

Mr. *Howard* was Sworn.

He depos'd, That the 27th of *August*, 78, he saw Mr. *Ireland* at the Horse-Race at *Etchinghill*; and that the 28th the Deponent din'd at Mr. *Herbert Aston's* House, at *Bellamore*, and there he saw him again; and that when the Deponent came to  
*London*

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*London* some Time after, they that knew Mr. *Ireland*, told him it was the same that suffer'd.

Mr. *Drayton* was Sworn.

He depos'd, That he saw Mr. *Ireland* at the Race at *Etchinghill*, the 27th of *August*, 1678; that the *Thursday* following, the Deponent saw him at *Tixhall*, and he went Home with Mr. *Heveningham* to *Aston*; that on *Friday* the Deponent saw him there, and they went a Fishing, and catch'd a Pike a Yard long; that on the 31st, my Lord *Gerrard's* Father, the Deponent's Master, went to kill a Buck in the Park, and Mr. *Ireland* went with him; that on *Sunday* the 1st of *September*, the Deponent was sent over to Mr. *Gerrard's*, of *Hildersham*, who was Sick, and there he saw Mr. *Ireland*.

*Att. Gen.* This Lord *Gerrard's* Father he mentions, was accus'd by *Dugdale* of the Plot, and died in *Newgate*.

Sir *James Simmons* was Sworn:

*Sol. Gen.* When did you see Mr. *Ireland*, Sir *James*?

Sir *J. Simmons*: I saw him the 27th of *August*, 78, at an Inn, after we came from *Etchinghill* Horse-Race, and we drank together; the 29th, I saw him at *Tixhall* Bowling-Green, and he came home with my Father *Heveningham* and me to *Aston*, and staid there that Night, and the next Day I went to *Pancras* Fair, and did not come Home.

Mr. *Green* was Sworn.

He depos'd, He saw Mr. *Ireland* at *Etchinghill* Horse-Race, the 27th of *August*: that the 29th, Mr. *Ireland* went to Mr. *Heveningham's* at *Aston*; that on *Friday* the 30th, in the Afternoon, he went a Setting there; and that on *Saturday* the 31st, he was a Hunting with Mr. *Gerrard*; and that he saw the same Mr. *Ireland* drawn on a Sledge towards his Execution; that the Deponent, as to Religion, was ever a Roman Catholick.

Mr. *Fallas* was Sworn.

He depos'd, That on *Thursday* the 29th of *August*, being the *Thursday* after Sir *Hen. Gough's* Horse-Race, Mr. *Ireland* came to his Master, Mr. *Heveningham's*, and the Deponent look'd after his Horse;



Horfe; upon *Friday* they went a Fishing, and catch'd a great Pike; and after Dinner, *Mr. Ireland*, *Mr. Green* the Keeper, and his Lady, went out a Setting; that upon *Saturday* the 31<sup>st</sup>, they went a Hunting in *Mr. Gerrard's* Park, and kill'd a Buck, and that his Master ask'd *Mr. Ireland* to go Home with them again, but he said he was to be at *Mr. Lowe's* at Four, and that they parted from him about Three; and that the Deponent came to Town afterwards and saw him Executed the 24<sup>th</sup> of *February*; that as to the Deponent's Religion, he was always of the Church of *England*.

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*Oates*. I desire to know whose Servant he is.

*Fallas*. I am Servant to *Mr. Heveningham*, and I serve the King; I come to testify the Truth; I was here before, but then we must not be heard; all the Cry was that We were Rogues, and should be knock'd on the Head.

*L. C. J.* Were you here at any of the Tryals?

*Fallas*. I was at the Council-Table, and was in great Danger of being knock'd on the Head.

*Oates*. Would they have knock'd him on the Head at the Council-Table.

*Fallas*. When I was in the Room by the Council-Table, they cry'd out, Knock 'em down, Hang them Rogues, Do they come to testify against the Saviour of the World? And they came about me there, and ask'd me if I knew any of them, or belong'd to them? And I was glad to tell them, I came thither about a Law-Suit.

*Att. Gen.* We have brought it from the 3<sup>d</sup> to the 31<sup>st</sup> of *August*; we shall next prove he went to *Mr. Gerrard's*, of *Hildersham*, and was there the 31<sup>st</sup> and 32<sup>d</sup>.

*L. C. J.* How, *Mr. Attorney*, the 32<sup>d</sup>!

*Att. Gen.* The 1<sup>st</sup> of *September* I mean, my Lord.

*Mr. John Proctor* was Sworn.

He depos'd, That he was Servant to *Mr. Lowe*, at *Fulford*, and that he saw *Mr. Ireland* at his Master's the 31<sup>st</sup> of *August*, 78; and that the next Day, being the 1<sup>st</sup> of *September*, he saw him at *'Squire Gerrard's*, which is a Mile and half from *Mr. Lowe's*, and the Deponent remembers it was upon

The Witnesses  
that appear'd  
against *Oates*  
at the former  
Tryals, In-  
sulted and  
Threatned.

upon *Sunday* the 1st of *September*, because he rode to Mr. *Gerrard's* that Day before *Madam Brook*, and the Reason of his remembring he saw Mr. *Ireland* the 31st of *August* at his Master *Lowe's*, was, because the Deponent had been out that Day to pay some Moneys, and just as he return'd Home Mr. *Ireland* came thither, and that he afterwards saw the same Mr. *Ireland* Executed at *Tyburn*.

That as to his Religion, the Deponent said he was a Protestant; but Mr. *Oates* observ'd he was Servant to a Papist.

Mr. *John King* was Sworn.

He depos'd, That he saw Mr. *Ireland* at Mr. *Gerrard's* of *Hildersome*, on *Sunday* the 1st of *September*, where he, as well as this Deponent, lay that Night; that on *Monday* Morning this Deponent went Home to Mrs. *Crompton's*, at *Millage*, where he liv'd, which is about a Mile from *Hildersome*, and that Mr. *Ireland* came thither as soon as he, and din'd there that Day, and went from thence about Two a-Clock, and said he design'd to go to *Boscobel* that Night, and he remember'd Mr. *German Drayton* was at *Hildersome* the same Time Mr. *Ireland* was there; as to Religion, the Deponent said he was a Catholick.

Mr. *Francis Lee* was Sworn.

He depos'd, That in 78, on a *Saturday* Night, (he thought it was in *August*,) Mr. *Ireland* came to his Master *Gerrard's*, and staid all Night, and all Day on *Sunday*, and went away on *Monday* to *Millage*, to Mrs. *Crompton's*, and from thence to *Pancras* and *Boscobel*, where he staid all Night, as the Deponent was told. And *Proctor* was call'd in and said, he saw the Deponent at Mr. *Gerrard's* the same Time that *Ireland* was there; and that it was the same *Ireland* that was Executed.

Mr. *Biddolph* was Sworn.

*Ireland* prov'd to be in *Staffordshire*, the 2d of *September*, 78.

He depos'd, That on *Monday* the 2d of *September*, he Din'd with Mr. *Ireland* at his Aunt *Crompton's* House, in *Staffordshire*; that the Reason he remembred the Time so exactly was, That as he came by my Lord *Cullen's*, in *Northamptonshire*, my Lord desir'd him to be at a Horse-Race at *Newton-Slade*, where a Plate is always run for on the first *Thursday*

day in *September*, which that Year fell out to be the 5th; and that after he had Din'd at his Aunt's, he refus'd to stay there all Night, because he would not disappoint my Lord *Cullen*; and that he was sure this was the *Monday* before the Horse-Race.

Mrs. *Crompton* was Sworn.

She depos'd, That Mr. *Ireland* din'd at her House, at *Millage*, in *Staffordshire*, the same Day that her Nephew *Biddolph* was there; that she was not certain what Day it was, but it was about *Pancrass* Fair; That Mr. *Gerrard*, of *Hilderson*, came to her House with Mr. *Ireland*, but that Mr. *Ireland* was a Stranger to her, and she had never seen him before or since, and did not know it was he, but as they told her; That as to Religion, she was a Catholic.

Mrs. *Palmer* was Sworn.

She depos'd, That she din'd at Mrs. *Crompton's* with Mr. *Ireland*, but could not be positive as to the Time.

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Mrs. *Mary Holmes* was Sworn.

She depos'd, That on a *Monday* the Beginning of *September*, 78, (she thought the first Day) she saw Mr. *Ireland* at Mrs. *Crompton's*, at *Millage*.

Mrs. *Hesther Gifford* was Sworn.

She depos'd, That on the 2d of *September*, 78, about Four or Five in the Afternoon, she saw Mr. *Ireland* at *Pancrass*, above an Hundred Miles from *London*.

Mr. *Pendrel* was Sworn.

He depos'd, That Mr. *Ireland* was at his House, at *Boscobel*, the 2d of *September*, 78, all Night; and that he staid there all next Day, and went away the 4th, to Mr. *John Gifford's* at *Blackladies*:

Mrs. *Pendrel* was Sworn.

She depos'd, That she saw Mr. *Ireland* the 2d of *September*, at the *Royal Oak* at *Boscobel*; and, that he staid there *Tuesday* and *Wednesday*, and then went to *Blackladies*, and so to *Wolver-hampton*.

Mr. *Ireland* at *Boscobel* in *Staffordshire* the 2d of *September*, 78.

Oates. Was not Mrs. *Pendrel* at the Five Jesuits Tryal?

L. C. J. She was examin'd there, but not sworn; because she came to testify against the King.

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Mr.

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Mr. Charles Gifford was Sworn.

He depos'd, That he saw Mr. Ireland at his Father's House, at Blackladies, on the 4th of September; he was morally sure it was that Day. That he staid with them an Hour and half, and went through Chillington, and said he would go to Wolverhampton; and, That he came to their House to see one Madam Wells.

Sol. Gen. Thus we have prov'd where he was every Day, from the 3d of August to the 14th of September, but only the 8th of September. We have prov'd he came from Mrs. Harwell's the 7th, and he said he was to go to Tixhall; and the 9th he went from Tixhall in Sir John Southcoat's Company, and arriv'd at London the 14th.

L. C. J. Well, What say you to it, Mr. Oates?

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Oates. Has Mr. Attorney done with his Evidence?

Att. Gen. Unless you go about to support your Credit, and then we shall produce more.

Oates. I do not value any Witnesses you can bring against my Credit.

Oates enters upon his Defence.

My Lord, I am not the only Evidence of Mr. Ireland's being in Town in the Month of August; nor the only Witness that he was in Town about that Time in September.

He complains of being prosecuted so long after the Offence.

My Lord, The first Thing I shall offer to your Consideration, is the Hardship I lie under, of being put to disprove what the King's Council now charge me with after six Years Time. Now, Why has the Prosecution of this pretended Perjury been delay'd so long? When it appears, the Witnesses to prove it were known six Years since, and there has been no new Fact discover'd that was not then known: There is no Reason can be assign'd for this Delay, but to render it the more difficult for me to maintain the Evidence I then gave, so many Persons being since dead or gone beyond the Seas; and many Things that were then fresh, now grown out of Memory: And if such Practice is to be admitted, no Witness is safe in giving his Testimony against a Conspirator.

And here, my Lord, is only a bare Point of Time upon which this Perjury is assign'd; the Sub-



Substance of the Evidence I gave at the Tryals of Mr. *Ireland*, and the rest, about the Popish Plot, is not pretended to be disprov'd: Let it be remembered, that *Ireland* was convicted for a Treasonable Resolution to murder the late King, and not for being in Town in *August* or *September*, 78, which is the Perjury now assign'd. And, my Lord, 'tis unreasonable to tie up Witnesses, who come to discover Conspiracies, to speak positively to every little Circumstance of Time and Place, and such Niceties; it is usual to speak with Latitude in those Cases; and, I believe, I did not confine my self either to the 1st or 2d, 5th, 6th, 7th or 8th; but, my Lord, that he was in *September* there, I am positive; therefore I must beg the Opinion of the Court, Whether Mr. *Foster* did prove I was positive to the 1st and 2d Days of *September*, 78.

He urges, that Witnesses ought not to be tied up too strictly to a Point of Time.

*L. C. J.* The Evidence is plain, that you did swear positively to those two Days, and mentioned this material Circumstance to confirm it, That either the 1st or 2d of *September* you receiv'd Twenty Shillings of him in Town. Now, that Circumstance of his Kindness, was not a Circumstance either of Time or Place.

*Oates.* Then, my Lord, the first Thing I shall offer, is the Record of Mr. *Ireland's* Conviction of High Treason.

*L. C. J.* It is admitted of all Sides, that *Ireland* was convicted and attainted of Treason.

*Oates.* Then, my Lord, let it be observ'd, that the principal Part of Mr. *Ireland's* Defence, was an Endeavour to prove he was not in Town between the 8th and 12th of *August*, nor the 1st or 2d Days of *September*, which are the Things now in Issue; and to prove this, Mr. *Gifford*, and his Sister and Mother, were produc'd at Mr. *Ireland's* Tryal; and Mr. *Whitebread's* Tryal being Six Months after, he endeavoured also to prove, that Mr. *Ireland* was out of Town at those Times, and produc'd Mr. *Gifford* and several other Witnesses to prove it, to the Number of Sixteen; and notwithstanding all those Witnesses, the Jurors who try'd Mr. *Ireland*, and the Jurors who try'd Mr.

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*Whitebread* and the other Four Jesuits, found them all Guilty. And my Lord Chief Justice *Scroggs* observ'd, That the Prisoner's Defence consisted only in Catching at a Point of Time, and that it was most plain a Villainous Plot was discover'd: All which shews the Fulness and Satisfactoriness of the Proof given by me and *Bedloe*. And I must further observe, That tho' Mr. *Ireland*, by his false Witnesses, press'd this Matter as far as he could then, yet when the Jury brought him in Guilty, the Chief Justice express'd the Satisfaction of the Court, and said: Gentlemen, You have done like very good Christians, that is, like very good Protestants. And at the Tryal of the Five Jesuits the Chief Justice says, That the Jesuits were very exact at Catching in a Point of Time, but that was a Thing which no Man could precisely charge his Memory withal; and therefore perswades the Jury, that that should not be too strictly the Measure of their Judgments about Truth and Falshood, (the Mistake of Seven or Eight Days,) and that they were not to lay too great a Weight upon the Point of Time: Now, if too great a Weight be not to be laid upon a Point of Time, then this Charge against me is of no Weight at all. Besides, my Lord, it ought to be consider'd, That if this were the great Objection then, and then answer'd, It ceases to be an Objection now.

I shall offer the Testimony of Mr. *Bedloe*, who is dead, and at his Death confirm'd all that he had sworn of the Popish Plot to be true; and affirm'd, he had rather spoken less than the Truth than more; and to this I desire my Lord Keeper may be call'd, who took his Examination.

*L. C. J.* It is very well known to the World, and particularly to a Worthy Gentleman who sits by you (pointing to Mr. *North*,) That Mr. *Bedloe*, when he was Sick, did make some such Protestation.

Then Mr. *Blaney* was Sworn.

*Oates*. Pray, Mr. *Blaney*, See in your Notes of *Ireland's* Tryal, if *Bedloe* did not swear that Mr. *Ireland* was in Town the latter End of *August*, 78.

Mr.

Mr. *Blaney*. He said it was in *August*, he would not be positive to a Day, but he thought it the latter End.

*Oates*. Then, my Lord, I desire Mr. *Jennison's* Deposition of Mr. *Ireland's* being in Town, taken before Sir *Edmund Warcup*. I may call some Witnesses to make Proof of.

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L. C. J. We cannot admit that in Evidence, unless the King's Council will consent.

The Deposition of a Person absent, not to be admitted in Evidence.

*Oates*. Then I will prove what he swore at another Tryal.

L. C. J. Why, Is he dead?

*Oates*. It has cost me a great deal of Money to search for him, but I cannot hear of him.

L. C. J. Tho' in Strictness we should not admit such Evidence, unless the Party be dead, yet if you can prove any thing he swore at another Tryal, we will indulge you so far.

*Oates*. Have you the Record of Sir *George Wake-man's* Tryal, Sir *Samuel Astry*.

L. C. J. Put it in : And now, Mr. *Oates*, prove what you can.

Then Mr. *Oates* demanded of Mr. *Blaney*, If he could remember what *Jennison* swore at that Tryal; but Mr. *Blaney* could remember nothing of it,

Mr. *Oates* desir'd Sir *Edmund Warcup* might be examin'd about the Deposition he took of *Jennison*, concerning *Ireland's* being in Town the 19th of *August*: Which the King's Council said they would consent to, if *Oates* would admit *Jennison's* Letter under his Hand to be read, wherein he own'd he was mistaken in his whole Evidence about that Matter.

To which Mr. *Oates* consented, and Sir *Edmund Warcup* was examin'd; but he said he had deliver'd the Deposition to the King and Council, and could not remember the Particulars.

Then Mr. *Oates* called *Sarah Batten*.

He demanded of her, If her Name was not *Pain* formerly, and she did not give Evidence at Mr. *Ireland's* Tryal? But it appearing he was mistaken in the Person, he examin'd her no further.

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Mr. *Oates* call'd Mr. *Percival*, Mr. *Vaughan*, Sir *Michael Wharton*, and several others, but they did

He calls his Witnesses, but they don't appear.

He insists, that there were other Witnesses of Ireland's being in Town, besides himself.

And that a Witness for the King ought not to be indicted for Perjury.

And that if he had been a Witness in any other Cause, he should have met with better Usage.

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not appear. He said he had serv'd them all with *Subpœna's*, but they would not come; and then he proceeded in his Defence.

My Lord, Both *Bedloe* and *Sarah Pain* have sworn, That *Ireland* was in Town in *August* as well as my self; and I think I am hardly us'd, that after Witnesses are dead, or gone out of the Way, I should have such a Part of my Testimony call'd in Question. *Jennison's* Evidence has formerly been made use of and approv'd, as is well known to those who sat Judges upon my Lord Viscount *Stafford*. And, my Lord, as I hope for Salvation, all that I have sworn about Mr. *Ireland's* being in Town between the 8th and 12th of *August*, 78, and the Beginning of *September*, is true; and tho' there are a great many Witnesses produc'd against me this Day, a great Part of them do not come up to the 8th or 12th of *August*; and I desire your Lordship will remark to the Jury, what little Credit these Witnesses had at the Tryals of *Ireland* and the Five Jesuits: And I believe I am the first Precedent, of a Person's being Indicted for Perjury for being a Witness for the King, in such a Case as this, after Six Years elaps'd, and Verdict upon Verdict, and Judgment and Execution upon those Verdicts, and when no new Objection is offer'd, but what was then urg'd; and no Circumstance occurs now but what was as conclusive then, unless the Change of the Season. And at those Tryals all the Judges of *England* were Commissioners of *Oyer* and *Terminer*, and fully debated and discussed these Matters, and saw all these Objections fully answered and confuted. Had I been Witness in any Cause but a Popish Conspiracy, I had met with fairer Quarter; but at this Rate, it is safer for a Papist to be a Traytor, than for a Protestant to discover a Popish Plot. I hope you will consider my Witnesses are either in Places unknown, or are such as, considering the Times, dare not appear; yet I hope you that are sworn to do Justice, will not suffer me to be ruin'd by the false Testimony of the Papists who are Parties; for they have a Turn to serve, and are resolv'd to wreak their Vengeance upon me: Now they have Hopes of bring-

ing



ing in their Religion, and would welcome it with my Ruin. Their Eyes now see what their Hearts so long have wish'd, the Death of a Great Man who died lately, and against whose Life they so often and so long Conspir'd. Had this been their first Conspiracy, the Truth of it might have been disputed; but if you cast your Eyes upon the Reigns of Queen *Elizabeth*, King *James*, and King *Charles*, What can be averr'd against those numerous Records of their Conspiracies: And then surely my Discovery will not be deem'd so improbable a Thing. And I hope the Jury will consider, That the Men who are Witnesses against me, their very Religion is Rebellion, and their Principles and Practises pernicious to our Government. And, my Lord, if *Coleman's* Correspondence with *Le Cheefe*, the *French King's* Confessor, for promoting Popery in *England*, be consider'd, it is a Demonstration of the Plot, and sufficiently vindicates me.——

My Lord, I have a Favour to beg; I had but an ill Night, and am now in great Pain, I desire you would assign me Council to argue the Errors in Yesterday's Indictment, and give me a Week's Time to prepare and instruct my Council; to which the Court agreed, but told him, By the Rules of the Court he ought to have but Four Days. Then he desir'd he might have Liberty to withdraw; to which also the Court agreed.

*Sol. Gen.* Gentlemen of the Jury, You have seen between Forty or Fifty Witnesses produc'd, to shew that it is impossible what *Oates* did swear can be true. He says indeed, that this is in a Circumstance of Time, wherein it is difficult for a Man to be positive to a Day; and that it is usual with Witnesses, in Points of Time, to swear with a Latitude: But, Gentlemen, should we grant this false Doctrine to be true, (and false certainly it is, and of most pernicious Consequence it must be, if when Men are charg'd with Things that depend upon Time and Place, the Witnesses should not be kept to those Circumstances) yet this I say, if Granted, can do him no manner of Service in the Case before you: For between the 3d of *August* and the 14th of *September*, which includes both

He has a Week's Time given him to move in Arrest of Judgment in the other Cause, And has Leave to withdraw, Page 477. Mr. Solicitor's Reply to *Oates's* Defence,

He observes,  
that *Oates's*  
Evidence can-  
not be true,  
allowing him  
a Latitude of  
Twenty Days.

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the Times he swears to, and gives him a Latitude of above Twenty Days besides, there is not a Moment of Time wherein his Oath can be true.

Gentlemen, You have observ'd how the Witnesses have given you an Account of every Particular Day of both Months, from the 3d of *August* that *Mr. Ireland* left *London*, to the 14th of *September*, when he return'd thither again. And that their Testimony might the more evidently appear to be true, they have given you such remarkable Circumstances why they remembred the particular Times they swear to, as renders it impossible they can be mistaken: *And then Mr. Solicitor summ'd up the Evidence that had been given. After which he proceeds:* And now let the World judge, If there be any Room left to suppose that any one Word *Mr. Oates* has depos'd can be true, even allowing him that Latitude of Time he desires, and says all Witnesses ought to be allow'd: No, there is not a Moment wherein he can verify one Tittle of his Evidence, as to *Ireland's* being in Town; and this sure I may call Demonstration that what *Oates* has sworn is utterly false. Gentlemen, the Jury that try'd *Ireland* had not this Evidence: Indeed some that went out of Town with him, and one or two from *Wolverhampton*, were at the Tryal of the Five Jesuits, but not more than Five or Six in all of the Forty odd that now appear; and for want of these *Ireland* unfortunately suffer'd, for so I shall take Leave to say it was *unfortunately*.

Reasons given  
why this Pro-  
secution was  
so long delay-  
ed.

And there is one Thing *Mr. Oates* lays great Stress upon, and would have you think he is hardly dealt with, Because this Prosecution has been so long delay'd.----- But, Gentlemen, With Sorrow we must remember, That there was a Time when the City of *London* was so corrupted, that it was made a Refuge and a Sanctuary for High Treason: When the King could have no Justice there, and Men lodg'd themselves within those Walls as a Protection for their Conspiracies. The Time has been when Indictments were preferred, and the most convincing Evidence given the Grand Jury, even to the Satisfaction of all who heard it, and yet

yet they have refused to find the Bill, and not only so, but they were so abetted by the Rabble, that it was scarce safe for a Judge to sit upon the Bench; and therefore it is no Wonder an Indictment was not preferred against *Oates* at that Time, when the plainest Proof against such Criminals could not be admitted. This may give sufficient Satisfaction Why it has been delay'd, and may caution every Man How they fall into the same Circumstances again.

The Faction's  
Disposition of  
the City of  
London.

But Gentlemen, You have heard the Evidence to prove this Fact: And it is plain to a Demonstration, If you believe that Mr. *Ireland* was seen by these People at all, he was seen at those very Times they have particularly declar'd; for upon Consideration of the Circumstances, it is impossible it should be at any other Times, and so I leave it to you to consider whether the Defendant be perjur'd or not.

L. C. J. " Gentlemen, I cannot without Horror reflect on the many Mischiefs we have been  
" run into, if the Testimony given against *Oates*  
" this Day proves true. I cannot but bewail,  
" that so many innocent Persons (to the Reproach  
" of our Nation be it spoken!) have suffer'd  
" Death upon this Account; and it is the more to  
" be lamented, when we observe that Impudence  
" which has brought this Infamy upon the Nation,  
" continue with a brazen Face, defying all  
" Shame to this Day; that a Man who has assum'd  
" to himself the Habit and Character of a Preacher  
" of Religion and Virtue, should become such  
" a Monster of Impiety and Impudence, in Defiance  
" of Heaven and Earth.—— And I cannot  
" but be concern'd at the Wickedness of our Age,  
" when I reflect on the Testimony of that other  
" Wretch *Bedloe*, who when he was going out of  
" the World, persisted in such gross Falsities: Infamous  
" *Bedloe*! Whose Name must be for ever infamous  
" to all Mankind, that have any Deference  
" for Truth, who with his latest Breath dare affirm,  
" that every Word he had said of the Popish Plot  
" was true; when it is as clear as the Sun, by the  
" Testi-

The Chief Justice directs  
the Jury.

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Page 481.

“ Testimony given this Day, that every Word he  
“ swore against *Ireland* was false.

“ Gentlemen, The Times were such when  
“ these Fellows were believ'd, that if a Cause  
“ came to be tryed at *Guildhall*, it always went  
“ according to the Characters of the Parties, and  
“ not the Merits of the Cause: If a Man were  
“ blasted with the Name of a *Tory*, he was sure to  
“ lose it; but if a Whining Rascal was sanctified  
“ with the Name of a *Whig*, he was sure to carry  
“ it; Witness the famous Cause of Mr. *Loads*,  
“ about his Limons.—— And when such She-  
“ riffs came to be elected again, as were fit to be  
“ entrusted with the City Business, then did they  
“ break out into that horrid Conspiracy, against  
“ the Life of that merciful Prince (who is lately  
“ deceased, to the Grief of all his Loyal Sub-  
“ jects;) and they would have robb'd us of his  
“ Sacred Majesty, our present most Gracious So-  
“ vereign; whom I pray God to preserve long to  
“ Reign over us. *To which the Auditory said*  
Amen.

He insinuates,  
that the Po-  
pish Plot was  
a Sham.

“ Gentlemen, When we reflect on these Things  
“ we must observe, That that was the real, the  
“ true Plot; for there is one Thing observable  
“ that attends this whole Affair; that every Per-  
“ son that was executed for the Plot which the  
“ Witnesses truly call *Qates's* Plot, to a Man, de-  
“ nied it even to the last Gasps, and took it upon  
“ their Salvations that they were Innocent; when  
“ they had not those Hopes of Life that *Bedloe*  
“ had, (for surely he dare not have attested such  
“ Notorious Lies, if he had not hoped to have re-  
“ cover'd).—— On the other Hand, there was  
“ not a Man who was concern'd in the Plot of  
“ which this was to be the Blind, had the Confi-  
“ dence to deny it at their Execution: But as  
“ to the particular Case before you, Mr. *Qates* in-  
“ sinuates, that it is hard he should be brought to  
“ Tryal after so much Time elaps'd, and that he  
“ was not prosecuted sooner, while Things were  
“ fresh in People's Memories: Now, besides the  
“ Answer that this Objection has already receiv'd,  
“ To what Purpose should Mr. *Ireland's* Relations  
ga

Page 482.



“ go about to disprove *Oates* after he was dead?  
 “ That would not revive him; but you may ob-  
 “ serve they did attempt it while he was alive;  
 “ and the old Gentlewoman swears, that as soon  
 “ as she heard what Mr. *Oates* had sworn, she im-  
 “ mediately dispatch’d an Express to *London*, and  
 “ sent a Petition to the King, That either *Ireland*  
 “ might have a new Tryal, or be Repriev’d till  
 “ they could bring up their Witneses: But such  
 “ was the Misfortune of those Times, that even  
 “ the Fountain of Mercy it self was stopp’d, and  
 “ even that compassionate Prince was compell’d  
 “ to permit that Execution against his Inclinati-  
 “ on, rather than give Disturbance to his People,  
 “ there having been a Verdict and Judgment in  
 “ the Case; but it is well known by those who  
 “ were near his Person, how often he express’d  
 “ his Concern for having consented to this Exe-  
 “ cution, and that he reflected on it with Regret  
 “ even to his dying Day, as his Royal Father did  
 “ on the Business of my Lord *Strafford*: Nor ought  
 “ these Things to be remembred as any Reflection  
 “ on the Memory of those Princes, but with In-  
 “ famy to those who were the Causes of them:  
 “ Unhappy is it for the Prince when the Times  
 “ are so tumultuous, that he is compell’d to re-  
 “ strain his Mercy where he thinks it due, rather  
 “ than seem to stop the Current of Justice. To the  
 “ next Objection which Mr. *Oates* makes, *That the*  
 “ *Witneses against him are all Papists, who come with*  
 “ *a Design to destroy the Government and ruin the*  
 “ *Protestant Religion*; and that all these Persons of  
 “ Quality, and others, come and forswear them-  
 “ selves, and damn their Shuls, only to destroy In-  
 “ nocent Protestant Mr. *Oates*, it might be answer’d,  
 “ that Seven or Eight of them happen to be Prote-  
 “ stants: Not but that a Roman Catholick is a  
 “ good Witness in Point of Law, and to be cre-  
 “ dited as much as another, unless there be some  
 “ legal Objection made to him, which would hold  
 “ as well against a Protestant as a Papist; and this  
 “ has always been the Law, and shall be my Pra-  
 “ ctice, let the Sober Party, as they call them-  
 “ selves, make what Reflections they please, let  
 “ them

The Reasons  
 that induc’d  
 King *Charles*  
 to permit *Ire-*  
*land* to be Ex-  
 ecuted.

He soon re-  
 pent’d it.

Says, The Testimony of a Papist deserves as much Credit as a Presbyterian.

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Page 485.  
Oates Convicted.

" them send me as many Penny-Post Letters and  
 " Libels as they have a Mind to; (two I receiv'd  
 " last Night, concerning Yesterday's Tryal) This  
 " I am satisfied of, That Lying is as much the Talent of a Presbyterian, as it can be of a Papist.  
 " Nay, it is as inseparably Incident to a Presbyterian (and such snivling, canting, whining  
 " Knaves) to Lie, as it is to speak; as often as they  
 " do one, they do the other.

" And Mr. Oates mightily insists, That because  
 " he was believ'd before, it would be to cast a Reflection on former Injuries, to disbelieve him  
 " now. If that Opinion should prevail, it were  
 " impossible Perjury should ever be detected. The  
 " Nation was then in a Hurry and Surprise, and  
 " it was not then suppos'd, there could be such  
 " Villains upon Earth, as impudently to swear  
 " High Treason against their Fellow Subjects, if  
 " there were no Truth in the Accusation. But  
 " the Eyes of all honest Men are open'd now: We  
 " have seen the Effects of our Credulity, and it  
 " concerns us to shew our just Resentment to the  
 " World." Then my Lord Chief Justice went over  
 " the Evidence, and afterwards proceeded to say to  
 " this Effect. "'Tis incumbent on you, Gentlemen,  
 " to Try these Facts according to your Evidence:  
 " And 'tis incumbent upon us, who sit here as  
 " Judges, to see the Law Executed. And, God  
 " forbid, but we should use our utmost Endeavours, to inflict the greatest Vengeance, that the  
 " Justice of the Nation can permit us to inflict upon  
 " such Villains, who have contracted so much  
 " Mischief and Reproach on us, and so much Guilt  
 " upon themselves.

Then the Jury withdrew, and after half an Hours recess, return'd, and brought the Defendant in Guilty of the Perjury whereof he stood Indicted; and the Lord Chief Justice, and the rest of the Judges, declared their Approbation of the Verdict, and then the Court arose.

On Monday, the 11th of May, Mr. Wallop mov'd, that they might have Leave to move in Arrest of Judgment, upon this Indictment, the next  
 Saturday,

*Saturday*, as they had upon the other, to which the Court agreed. But upon a Motion by Mr. *Attorney General*, the Court order'd a Note of the Exceptions to both Indictments should be sent to the King's Council, some Days before *Saturday*.

*Die Sabbati 26 Maii, 1685. Dominus Rex versus Oates. B. R.*

The Defendant, *Oates*, being brought up from Prison by Rule, mov'd that he might have two or three Days more allow'd him, that his Council might be prepar'd to Argue for him; but this the Court deny'd, and demanded of Mr. *Wallop*, If he had any Thing to say for him? He answer'd, He had nothing to say.

He desires longer time to move in Arrest of Judgment.

*Att. Gen.* There were Four Exceptions deliver'd me last Night, as made by Mr. *Wallop*.

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Cl. of the Cr. Reads. *Dominus Rex versus Oates. The Defendant's Exceptions.*

1. That a Witness swore on behalf of the King, in a Process of High Treason, cannot be punish'd for Perjury by the King.

His Exceptions to the Indictment.

2. That it does not appear, that the Indictments of Ireland, &c. found in Middlesex, were legally transmitted into London; and consequently, all the Proceedings thereupon, were Coram non Judice.

3. That the Perjuries Assign'd, are foreign to the Issue.

4. It is Resolutio Signat' in that part of the Indictment that mentions what the Defendant swore: And in the Perjury assign'd, it is Resolutio Signand'; which is no good Assignment of the Perjury.

To these Exceptions, it was answer'd by Mr. *Attorney* and the Court.

1. That the first Exception was a plain Mistake of the Indictment, for the Defendant was not Indicted upon the Statute: And at Common Law, he might be Prosecuted for the King, though he was a Witness for the King before. And that, it Witnesses who came and forswore themselves, to take away Mens Lives, could not be call'd in Question Criminally by the King, (at whose Suit only, a Man could be Prosecuted for his Life, unless in Case of Appeals) it would be an encouragement to Villainy,

An Evidence for the King, may be Indicted for Perjury at Common Law, but not upon the Statute.

lainy, and make the Process of Law, to become an Instrument of the greatest Cruelty in the World.

It shall be intended the Record was well transmitted from Middlesex to London.

That the Perjuries assign'd were not foreign to the Matter in Issue.

2. As to the second Exception, *That it did not appear Ireland's Indictment, &c. was well transmitted from Middlesex to London*, that was well enough; for it being recited they were so and so Indicted. It sets forth, That the Tryals were had upon Records there depending, before the Commissioners of Oyer and Terminer, and Goal Delivery: And it shall be intended, that they were well brought before them.

3. That as to the third Exception, *That the Perjuries assign'd were foreign to the Matters in Issue*: It was apparent that one of the Indictments was in the express Points of the Great Treason charg'd against them, viz. *The Consult on the 24th of April*. And that for the other, the Time was very material, because that it was impossible that Ireland could be Guilty of the Treason sworn against him at his Chamber in *Russel-street*, between the 8th and 12th of *August*, if he were not then in Town. Nor could he be privy to the Treason sworn by *Bedloe*, the latter end of *August*, or the beginning of *September*, in *Harcourt's Chamber*, if he were out of Town from the 3d of *August*, to the 14th of *September*.

4. To the fourth Exception, *That he swore he saw them sign it, and the Perjury assign'd, is, that he did not carry it to be Sign'd*, They answerd, That it was alledg'd, that he falsly and corruptly swore that he was present; and that he carried the Resolution to be Sign'd, and he saw them Sign the Resolution. Now, 1. It is said he was not there. 2. He carried no such Resolution to be Sign'd, and that there was no occasion to say he did not see it Sign'd: For if he was not there, nor did carry it, he could not see them Sign it. Besides that, if any one part of the Oath he swore, prov'd false, that was sufficient to maintain the Verdict; but here it was notoriously plain, that it was false throughout. And my Lord Chief Justice said, That all the Judges of *England* had been Consulted, That if the Law would admit of it, he might receive such

Page 487.  
If any part of the Defendants Oath was false, it was sufficient to maintain the Indictment.

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such a Judgment for this Offence, as might be adequate to the Crime, and deter others from committing the like again.

That by the ancient Laws of *England*, Perjury was punish'd with Death: That, afterwards, it was punish'd by cutting out the Tongue. And now, by the unanimous Opinions of all the Twelve Judges, it was resolv'd, that by the Law, Crimes of this Nature, were left to be punish'd according to the Discretion of this Court; provided, such Judgment extend not to Life or Member.

Then the Judges having consulted together, Mr. Justice *Withins* pronounc'd the Sentence, viz.

*That the Defendant should pay 1000 Marks upon each Indictment: That he should be strip'd of his Canonical Habits: That he should stand in the Pillory before Westminster-Hall Gate, on the Monday following, for an Hour, with a Paper over his Head, declaring his Crime; but that, first, he should walk with it round all the Courts in the Hall.*

On the second Indictment, the Judgment was, *That he should stand in the Pillory the Tuesday following, at the Royal Exchange: That the next Wednesday, he should be Whip'd from Aldgate to Newgate; and on the Friday following, he should be Whip'd from Newgate to Tyburn, by the Hands of the Common Hangman: That the 9th of August, every Year of his Life, he should stand in the Pillory before Westminster-Hall Gate: The 10th of August, at Charing-Cross; and the 11th, over against the Temple: And the 2d of September, at the Royal Exchange; and on the 24th of April, every Year, at Tyburn.*

Perjury anciently punish'd with Death.

But now at the Discretion of the Court, saving Life and Member.

Oates's Sentence.

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The

Page 489. *The Tryal of the Lady ALICE LISLE, for High Treason, before the Lord Chief Justice JEFFERIES, &c. upon a Special Commission of Oyer and Terminer, held at the City of Winchester, for the County of Southampton, the 27th August, 1 Jac. II. 1685.*

The Indictment for High Treason, in harbouring Hicks, who was in Monmouth's Rebellion.

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The Prisoner being thick of Hearing, has one to assist her at her Tryal.

“ THE Indictment sets forth, that the said Alice Lisle, of the Parish of *Ellingham*, in the County of *Southampton*, Widdow, not weighing the Duty of her Allegiance, &c. the 28th Day of *July*, in the 1st Year of King *James* the 1<sup>st</sup>, well knowing *John Hicks*, of *Keinsham*, in the County of *Somerset*, Clerk, to be a false Traitor, and to have Conspir'd the Death and Destruction of the said King, and to have Levy'd War against him, within his Kingdom of *England*, Did, in her Dwelling House, at *Ellingham*, aforesaid, Traiterously Entertain, Conceal, and Comfort, the said *John Hicks*, and cause Meat and Drink to be deliver'd to him, against the Duty of her Allegiance, the King's Peace, &c.

To which Indictment she pleaded *Not Guilty*.

The Prisoner being Old and Infirm, and thick of Hearing, one *Matthew Brown*, at her Request, was permitted by the Court, to stand by her, to inform her what pass'd in Court, and to give her his Assistance. And it being a Cause of some Expectation, the Lord Chief Justice order'd the Sheriff to return a Jury of good Quality.—— Then the Jurors were call'd over, and the Prisoner Challeng'd several, and at length the following Gentlemen were sworn.

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| <i>Gabriel Whistler, Esq;</i> | } | <i>Dutton Gifford, Esq;</i> |
| <i>Henry Dawley, Esq;</i>     |   | <i>Thomas Crop,</i>         |
| <i>Francis Morley, Esq;</i>   |   | <i>Richard Snatt,</i>       |
| <i>Francis Pawlet, Esq;</i>   |   | <i>John Cager,</i>          |
| <i>Richard Godfrey, Esq;</i>  |   | <i>Matthew Webber,</i>      |
| <i>Thomas Dowse, Esq;</i>     |   | <i>John Fielder.</i>        |

The

The Jury being Charg'd with the Prisoner, Mr. Mundy open'd the Indictment, and Mr. Polexfen open'd the Nature and Course of the Evidence; and first the King's Council proceeded to prove that Hicks was in the Rebellion: To which purpose,

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Mr. Pope was call'd and Sworn.

Mr. Polexfen. Pray tell the Court, What you know concerning Mr. Hicks?

Pope. I had the Misfortune to be taken Prisoner by Monmouth's Army, and was brought to Keinsham, and put into Sir Thomas Bridges's Stables, and kept under a Guard there. And Mr. Hicks, (whom I saw Yesterday in Salisbury Goal) came and ask'd for the Prisoners, who were four or five in Number, and demanded, If we were kindly us'd? We said, No; We had but a piece of Bread in two Days. Hicks reply'd, he was sorry for it, it was otherwise intended; and, he said, he would speak to the King (meaning the Duke of Monmouth) for us: And there was a Gentleman with him, they call'd the King's Chaplain. Mr. Hicks also told us, the King, (meaning the Duke of Monmouth, I suppose) was a good Protestant; and he wonder'd what we could say for our selves, being Protestants, in serving a Popish Prince, and not obeying a Protestant King; and used several other Expressions, reflecting on the King and Government.

Evidence that Hicks was in the Rebellion.

Mr. Rumsey. Did you see Hicks in the Army, about the time of the Fight?

Page 492.

Pope. I think I saw him about a Day or two before.

L. C. J. Had he any Weapon on?

Pope. I think not, my Lord.

Sir George Jeffries.

Mr. Fitzherbert call'd.

He depos'd, that while he was Prisoner at Keinsham, with Mr. Pope, he saw John Hicks hold a Discourse with Mr. Pope, almost an Hour, where-in he disparag'd the Government and his Majesty, and extolled the Duke of Monmouth as a brave Prince, and a good Protestant.

L. C. J. Is that the same Man you saw in Monmouth's Army?

*Fitzherbert*. Yes, I saw him Yesterday at *Salisbury*; and he owns he is the same Man.

*Mr. Taylor* was call'd.

He depos'd, that he was Prisoner also, with *Mr. Pope* and *Mr. Fitzherbert*; and *Hicks* came to them, into *Sir Thomas Bridges's* Stables, and said, He wonder'd they would take Arms against so good a Prince as the Duke of *Monmouth*, who was a Protestant, and hold with Popery, for *York* was a Papist. And added, That he saw *Hicks* afterwards, up and down *Monmouth's* Army; and it was the same Man he saw at *Salisbury*.

Then *James Dunne* was Sworn.

*Mr. Polexsen* acquainted the Court, that he was an unwilling Witness, and desir'd he might be examin'd strictly. Whereupon, the Chief Justice shew'd him the Danger of swearing falsely, as well in regard to his Temporal, as Spiritual Concerns: And insinuated, that his Lordship was already pretty well appriz'd of the Truth of the Fact; and assur'd him, that as none of his Saints could save his Soul, so neither should they save his Body, if he catch'd him prevaricating. He would punish every variation from Truth, he found him Guilty of. After which, he commanded *Dunne* to give him an Account of the Message he carried to the Prisoner.

Evidence of  
the Message  
*Hicks* sent to  
the Prisoner,  
to desire En-  
tertainment  
at her House,  
&c.

*Dunne* depos'd, That he liv'd in *Warminster* Parish, in *Wiltshire*, and that a short black Man, of a swarthy Complexion, came to his House on *Friday* Night, after the Battle of *Weston*, and desir'd him to go to the Lady *Lisles*, with a Message from one *Mr. Hicks*, to know, if my Lady *Lisle* would entertain *Mr. Hicks*? and said, he should be well rewarded for going. That accordingly, the Deponent went to the Lady *Lisles*, being about Twenty six Miles, on the *Saturday*; and he met with one *Carpenter*, who was the Lady's Bailiff, and the Deponent ask'd him, if his Lady would entertain *Mr. Hicks*? but *Carpenter* said, he would have nothing to do with it, and sent him to the Lady; and upon delivering his Message, she told the Deponent she would entertain him, and he might come



come on *Tuesday* in the Evening; and he return'd Home on the *Sunday*, and brought that Answer.

Mr. *Pollexfen*. Did not the Lady ask you, if you knew Mr. *Hicks*? Page 494.

*Dunne*. Not that I remember.

Mr. *Coriton*. Do you believe that she knew him before?

*Dunne*. I cannot tell truly.

L. C. J. Would she entertain one she had no knowledge of, meerly upon thy Message?

*Dunne*. My Lord, I tell you the Truth: And on the *Tuesday* Morning, about Seven a Clock, they came to my House, three of them; one was the little black Man, who was there before, and another of them was a full black Man, and the other was a thin black Man, but I knew none of their Names. About Eleven a Clock we set out, and we went through *Deverel*, *Chilmark*, and *Sutton*, and so to the Plain; and then one *Barter* met us, to shew us the Way, for I knew the Way no farther.

L. C. J. How didst thou find the Way, when thou went'st on thy Message first? Page 495.

*Dunne*. My Lord, when I came to *Fovant*, I got this *Barter* to shew me the Way to my Lady *Lisle's*, at *Moyle's Court*, and appointed him to meet me on *Tuesday*.

L. C. J. Did you go the same Way on *Tuesday*, that you went on the *Saturday*?

*Dunne*. No, my Lord: I would have went the same Way, but they would not. It was not above Fourteen Miles, from *Fovant* to my Lady *Lisles*, the Way I went on *Saturday*, but we made it about Twenty, the Way we went on *Tuesday*. Page 496.

L. C. J. Who were the two Men that went with you?

*Dunne*. The two Men were, *Hicks* and *Nelthorp*: The little black Man did not go with us, and *Nelthorp* gave *Barter* Five Shillings, and discharg'd him about Eight Miles before we came to the House.

L. C. J. How did you find the Way without him?

*Dunne.* They sent me down to *Marton*, to one *Fane*, and bid me tell him, that Mr. *Hicks* desir'd to speak with him. And when *Fane* came, *Hicks* ask'd *Fane* to shew him the Way to Mrs. *Listles*; so he went with us part of the Way, and then left us.

*L. C. J.* What Entertainment had you at my Lady *Listles*?

*Dunne.* We came there between Nine and Ten a Clock at Night, and Mr. *Hicks* and Mr. *Nelthorp* went in, and I never saw them again till they were taken: They left their Horses at the Gate, but I put mine into the Stable. What became of their Horses I can't tell, for it was very dark.

*L. C. J.* Was the Stable Door lock'd or open?

*Dunne.* It was only latch'd, and I pull'd up the Latch, and put my Horse in; and Mr. *Carpenter* came afterwards with a Candle, and gave my Horse some Hay.

*L. C. J.* Did you see no Body but *Carpenter*? Did not you Eat and Drink in the House?

*Dunne.* My Lord, I eat only some Cake and Cheefe that I brought in my Pocket. And a Girl shew'd me the Way to my Chamber; I saw no body else.

*L. C. J.* Where did *Carpenter* first meet you? and, Who was with you then?

*Dunne.* *Carpenter* met us in the Court, after we came in at the Gate; and there was only *Hicks* and *Nelthorp* with me then, I am sure.

*Mr. Polexfen.* Pray, Mr. *Dunne*, at the Time you were desir'd to go on this Message, Was there not a Search made about the Country for Rebels that were fled from the Battle?

*Dunne.* I did not hear of any near me, but there were in other Places.

*L. C. J.* It being a suspicious Time, when the little Man with the black Beard came to you, did not you ask him, Who this Mr. *Hicks* was? And when *Hicks* and *Nelthorp* came to your House, Did not you ask their Names?

*Dunne.* *Hicks*, the Fat Man, told me they were in Debt.

*L. C. J.* Now, upon your Oath, tell me truly, Who was it open'd the Stable Door? Was it *Carpenter* or you?

*Dunne.*

*Dunne.* It was *Carpenter*, my Lord.

*L. C. J.* Why thou Vile Wretch! Didst thou not tell me, that thou pulledst up the Latch? But, it seems the Saints have a Charter for Lying; they may Lie, and Cant, and Deceive, and Rebel, and think God Almighty takes no Notice of it. A Turk has a better Title to an Eternity of Bliss, than these Pretenders to Christianity; for he has more Morality and Honesty in him. Sirrah! I charge you in the presence of God, tell me true, What other Persons did you see that Night?

*Dunne.* I did not see any Body, but what I have told you already.

*L. C. J.* Did not *Carpenter* light you into the House with his Lanthorn?

*Dunne.* I went into the House.

*L. C. J.* No body thinks they thrust thee in: Did he light thee in, I ask thee?

*Dunne.* I went in along with *Carpenter*.

*L. C. J.* What Room did he carry you into?

*Dunne.* He carried me into no Room, but a young Woman shew'd me into a Chamber.

*L. C. J.* Wast thou not in the Hall or Kitchen? Did no body ask thee to drink one drop to thy Cake and Cheese?

*Dunne.* No, my Lord, I was neither in the Hall or Kitchen; or had one drop of Drink.

*L. C. J.* When was the first time you heard *Nelthorp's* Name?

*Dunne.* Not till he was taken: And then I heard Mr. *Hicks* say, he had gone by the Name of *Crofts* too.

*L. C. J.* Did not you hear him call'd by the Name of *Crofts* in the Journey?

*Dunne.* I cannot recollect that I did.

*Mr. Jennings.* You say *Carpenter* met you very Civilly, and took Care of your Horse; Did he make no Provision for *Hicks* and *Nelthorp's* Horses? Did not you tell him they were tied at the Gate?

*Dunne.* They were not tied at all; I know not what become of them.

*L. C. J.* Thou art a strange prevaricating, shuffling, snivling, lying Rascal. Will the Prisoner ask him any Questions?

Page 500. Mrs. *Lisle*. No.  
*L. C. J.* Perhaps her Questions might endanger the Truth coming out.

*Barter* was Sworn.

*Barter's* Evidence of his shewing *Dunne* the Way to *Moyles Court*, and giving *Col. Penruddock* Notice of it.

He depos'd, that *Dunne* came to his House upon the *Saturday*, and desir'd him to ride along with him to *Moyles Court*, where the Lady *Lisle* liv'd. That the Deponent went with him, and saw *Dunne* produce a Letter, and offer it to Mr. *Carpenter*, my Lady's Bailiff, but he refused to meddle with it; but sent *Dunne* to my Lady. And while the Deponent was in the Kitchen, the Lady came thither, and as'd him, What Countryman he was, and some other ordinary Questions. Then she went to *Dunne*, and talk'd with him; and they look'd upon the Deponent, and Laugh'd. And that as *Dunne* and the Deponent were returning home, the Deponent ask'd, What they laugh'd at? and *Dunne* answer'd, my Lady ask'd him, If the Deponent knew any thing of the Concern? and upon his telling her he did not, she laugh'd.

He depos'd farther, That after this Journey, he was so troubled, that he could not rest, till he went and discover'd the Matter to *Col. Penruddock*; and that he told the Colonel where he had been on the *Saturday*, and where he was to meet them again, on *Salisbury Plain*, on the *Tuesday*: And the Colonel then agreed, to come and take them on the Plain, but something prevented him. However, the Deponent met them, and they rode together about Ten Miles. And they would have had the Deponent led them a private Way over the *Fording Bridge*, towards *Moyles Court*; but he told them, If they would have him for their Guide, they must go the Way that he knew. Then the Fat Man sent *Dunne* to *Marton*, for one *Fane*, to show them the private Way. And the Deponent finding they had no farther occasion for him, rode away to *Col. Penruddock's*, and let him know they were gone to the House; but that before he left them, *Nelthorp* gave him Five Shillings.

*Mr. Polexfen*. What Discourse had you with *Dunne*, the first time you went with him?

*Barter*.



*Barter.* He said, that they had half a Score Thousand Pounds a Year a-piece, and that they were to come such a Way to my Lady *Lisle's* on *Tuesday* in the Evening. And that it would be a very fine Booty, he should never want Money again. And that he gave the Deponent half a Crown then, and told him he should be very well paid,

*L. C. J.* Then let Honest Mr. *Dunne* stand forth a little. You talk'd of carrying a Message from *Hicks* to my Lady *Lisle*, Did not you carry a Letter? *Dunne and Barter Confronted.*

*Dunne.* No, my Lord, I did not.

*L. C. J.* What say you, *Barter*, to that?

*Barter.* My Lord, I saw him produce the Letter to the Bailiff?

*L. C. J.* Did you not tell *Barter*, you should be at *Salisbury Plain* with two People, on the *Tuesday*?

*Dunne.* No, my Lord, I said between *Compton* and *Fovant*.

*L. C. J.* Did you not tell him they were brave Fellows, and had several Thousands a Year?

*Dunne.* No, my Lord, I did not.

*L. C. J.* But did not you tell *Barter*, that you told my Lady (when she ask'd, Whether he was acquainted with the Concern) That he knew nothing of the Business.

*Dunne.* My Lord, I did tell him so.

*L. C. J.* Then tell us what that Business was? Page 301.  
[*He stood musing a great while.*]

*Dunne.* I cannot mind it, my Lord, what it was.

*L. C. J.* How hard the Truth is to come out of a Lying Presbyterian Knave! Prithee, Friend, consider the Oath thou hast taken; that thou art in the presence of a God that cannot endure a Lie, and thou hast call'd him to Witness that thou dost testify the Truth, the whole Truth, and nothing but the Truth. I charge thee therefore, as thou wilt answer it to the God of Truth, What was the Business, you, and the Lady spoke of?

[*Having paus'd half a quarter of an Hour*] he said, I cannot give an Account of it.

*Dunne* refuses to answer the Court, and discover his Knowledge of the Matter.

*Then the Chief Justice conjur'd him several times, in the most solemn manner, to tell the Truth, but could get no answer from him.*

Page 502.

*L. C. J.* O blessed Jesu! What an Age do we live in? What a Generation of Vipers do we live among? Sirs, Is this that you call the Protestant Religion? Shall so Glorious a Name be applied to such Villany and Hypocrisy? Thou wicked Wretch, I charge you once more, as you will answer it at the Bar of the Great Judge, tell me, What that Business was, you and the Prisoner talk'd about?

*Still he would make no Answer.*

*L. C. J.* Prithee, dost thou think thou dost the Prisoner any Kindness by this Behaviour? Sure it were enough to Convert her, if it were nothing else.

Page 503.

*Dunne.* I do not think to do her any Kindness at all: Pray, my Lord, ask me the Question over again, once more, and I will tell you?

*L. C. J.* I will so, and will do it with all the Calmness and Seriousness I can. I would have thee have some Regard to thy Precious and Immortal Soul, which is more Valuable than the whole World. Therefore I ask you, with a great Desire that thou may'st free thy self from so great a Load of Falshood and Perjury, *What was the Business you told the Prisoner, the other Man, Barker, did not know?*

*Dunne.* My Lord, I told her he knew nothing of our coming there.

*L. C. J.* He must needs know of your coming there; but, What was the Business thou told'st her he did not know?

*Dunne.* She ask'd me, If I did not know that *Hicks* was a Nonconformist? and I told her, I did not.

*L. C. J.* But, What was that Business that he did not know?

*Dunne.* It was the same Thing, Whether Mr. *Hicks* was a Nonconformist?

*L. C. J.* Dost thou think, after all the Pains that I have been at to get an Answer to my Question, that thou canst banter me with such sham Stuff

Stuff as this is? Hold the Candle to his Face, that we may see his brazen Face.

*Dunne.* I am so baulk'd, I know not what I say my self: Tell me what you would have me to say, for I am clutter'd out of my Senses?

*L. C. J.* Prithee, Man, here is no body baulks thee; it is thy own deprav'd Heart that baulks both thy Honesty and Understanding: It is thy studying how to prevaricate, that puzzles and confounds thy Intellect.

*Mr. Polexfen.* Because he pretends Ignorance what *Hicks* was, I desire *Barter* may tell, what his Carriage was towards those People?

*Barter.* He told me he had concealed them in his House ten Days before.

*Dunne.* That I never did in my Life.

*Barter.* I don't know whether you did so or no, but you told me so; and when I wonder'd how you were able to keep them without being discover'd, you answer'd, You kept them in a Chamber all Day, and they walk'd out at Night; for the Houses were usually search'd at Night.

*L. C. J.* Didst not thou tell *Barter*, that it was the best Job thou ever hadst in thy Life, or to that purpose?

*Dunne.* No, my Lord, I did not.

*L. C. J.* What say you, *Barter*, Did not he tell you so?

*Barter.* Yes, my Lord, he did; and said he should never lack Money again.

*L. C. J.* I expect it from all you, Gentlemen, of the King's Council, that you take Notice what has pass'd, that an Information of Perjury may be prefer'd against this Fellow. Page 504.

*Col. Penruddock* was Sworn.

He depos'd, that *Barter* came to his House on a Monday Morning, and told him he had been with one *Dunne*, at my Lady *Lisle's*, to get Entertainment for some People; and that he was to meet *Dunne* again, between Nine and Eleven on Tuesday, upon *Salisbury* Plain, where the Deponent might take them. Whereupon, the Deponent directed *Barter* to meet them according to his Appointment, and sent a Servant to watch when they came by; but

*Col. Penruddock's* Evidence of his taking *Hicks* and *Nelbory* in the Lady *Lisle's* House.

but they taking another Way, his Servant mis'd of them. That *Barter* having told the Deponent, that *Dunne* said the Men were Rebels, and if he did not find them on the Plain, he might conclude they were gone to my Lady *Lisle's* House. The Deponent took some Soldiers early next Morning, and beset the House. That it was a pretty while before any body would hear; but at length *Carpenter* came, whom the Deponent desir'd to tell him ingenuously, who were in the House? And *Carpenter* confess'd there were Strangers, and pointed to that part of the House where they lay; but desir'd the Deponent would not let his Lady know he told him. That thereupon the Deponent, and those that were with him, went in, and found *Hicks* and *Dunne* in the Malthouse, *Dunne* having cover'd himself with some Stuff?

That afterwards the Lady appearing, the Deponent told her she had done ill in harbouring Rebels; she answer'd, she knew nothing of it, she was a Stranger to it. Then the Deponent said, he was sure there was somebody else; and desir'd her to deliver him up, and she should come to no further Trouble. But she deny'd it, and said she knew nothing of it; and thereupon they search'd further, and found *Nelthorp* hid in a hole by the Chimney.

*L. C. J.* How came you, *Dunne*, to hide your self in the Malthouse? For you say, you neither knew *Hicks* or *Nelthorp*; and that my Lady only ask'd you, If *Hicks* were a Nonconformist Parson? Surely you were Innocent! you had no occasion to be afraid.

*Dunne.* My Lord, I heard a great Noise in the House, and I did not know what it meant, and I went and hid my self.

*L. C. J.* Did not you say to *Barter*, that you took them to be Rebels?

*Dunne.* I take them to be Rebels! I tell *Barter* so!

*L. C. J.* Ay you Blockhead, Is not that a plain Question?

*Dunne.*



*Dunne.* I am quite clutter'd out of my Senses!  
I don't know what I say.

[*A Candle being held near his Nose.*]

*L. C. J.* To tell the Truth would rob thee of none of thy Senses: But one would think, that neither you nor your Mistrefs, the Prisoner, ever had any; for she knew nothing of it neither, tho' she had sent for them thither.

*Mrs. Lisle.* I hope I shall not be Condemn'd without being heard.

*L. C. J.* No, God forbid; that was the practice in your Husband's time, but, God be thanked, it is not so now; the King's Courts of Law, never Condemn without Hearing.

*Mr. Dowding* was Sworn.

He depos'd, that he was with Col. *Penruddock*, when he beset my Lady *Lisle's* House; that it was half an Hour before they got in, and that my Lady said she knew nothing of any Body being in the House.

*Mrs. Lisle.* This Fellow broke open my Trunk, and stole great part of my best Linnen: And sure, a Person who robs me, is not a fit Evidence against me; because he prevents his being Indicted for Felony, by Convicting me.

*L. C. J.* Did you find any Body in the House?

*Dowding.* I found this same *Dunne*, in a little Hole in the Malthouse; he had taken some Stuff to cover him: And we found one, who said his Name was *Hicks*, whom I saw Yesterday at *Salisbury*, when he had that Discourse with the other Witnesses. *Hicks* acknowledg'd, before me, that he was at *Keinsbam*, in the Duke of *Monmouth's* Army.

*Mrs. Carpenter* Sworn.

*Mr. Polexfen.* Did you know when these Men came to your Lady's House?

*Mrs. Carpenter.* Yes, they came at Night, and I dress'd a Supper for them, by my Lady's Order, and they eat in the Chamber where they lay. I carried it within the Room, and my Husband set it upon the Table. My Lady was there present.

*L. C. J.* Did your Lady use to Sup above!

*Mrs. Carpenter.* She us'd to Sup below.

The Prisoner's Husband a Member of the High Court of Justice.

Page 505.

*Carpenter and his Wife's Evidence of their Lady's entertaining Hicks and Nelthorpe.*

Mr.

Mr. *Carpenter* call'd.

Mr. *Polexfen*. Did you meet with *Dunne*, when he came to your Lady's House?

*Carpenter*. Yes, I saw him there on *Saturday*; and he ask'd me, If my Lady would give Entertainment to one *Hicks*, and another Person? but he could not tell me who that other Person was.

L. C. J. Did not he offer you a Letter to be deliver'd to your Lady?

*Carpenter*. No, my Lord.

*Barter*. I saw *Dunne* produce a Letter to Mr. *Carpenter*, but he refused to meddle with it.

L. C. J. Did not you bring the Men into your Lady's House, on *Tuesday* Night?

*Carpenter*. No, my Lord, I saw them first in the Room where they supp'd and lay.

L. C. J. Was not my Lady there?

*Carpenter*. She was in the Room, but I did not see her eat any thing.

L. C. J. Did you hear *Nelthorp* Named there? What sort of a Man is he?

*Carpenter*. I did not here him Named till he was taken: He is a tall thin black Man.

L. C. J. Did you carry any Beer up? Did not you make *Dunne* drink?

*Carpenter*. I did not see him drink, my Lady order'd the Provisions.

Mr. *Rumsey*, My Lord, *Dunne* says he will tell all now, whether it make for him or against him.

L. C. J. Let him but tell the Truth, and I am satisfied.

*Dunne* confesses he supp'd with *Hicks* and *Nelthorp* at my Lady *Liste's*, the Night before they were taken.

*Dunne*. Sure, my Lord, I never entertained these Men a Night in my House, in my Life; but 'tis true, *Hicks* did send that Man to me, to go to my Lady *Liste's*, to know if she would entertain him? And my Lady ask'd me, If he had been in the Army? and I said, I could not tell: And she ask'd me, If he had any Body with him? and I said, I believ'd he had. So when we came to my Lady's on *Tuesday* Night, some body took both their Horses, and they went in: And after I had set up my Horse, I went in with *Carpenter*, up to the Chamber, to my Lady, where *Hicks* and *Nelthorp* were; and I heard my Lady bid them Welcome to her House.

House. And Mr. *Carpenter*, or the Maid, brought in the Supper, and set it on the Table ; and, I confess, I did both Eat and Drink there in the Room.

*L. C. J.* Was there nothing mention'd of a Person's coming from beyond Sea ? Did not you hear *Nelthorp's* Name mention'd in Discourse ?

*Dunne.* He was either call'd *Nelthorp* or *Crofts*; and there was some Discourse about him.

*L. C. J.* I will assure you, *Nelthorp* told me all the Story before I came out of Town ; and that made me press upon you the Danger of forswearing your Self. I do not mention this, as Evidence to influence the Case ; but I could not but tremble to think, after what I knew, that one should dare to to prevaricate so with God and Man, in the Face of the Court.

*Dunne.* My Lady ask'd *Hicks*, Who that Gentleman was ? and he said it was *Nelthorp*, as I remember.

*L. C. J.* Was there no Discourse there about the Battle ? Or their being in the Army ?

*Dunne.* My Lord, they did talk of Fighting ; but I can't tell exactly, what the Discourse was. Page 307.

*L. C. J.* And, Why didst thou tell so many Lies ? Is not this a Reproach to the Protestant Religion, so much boasted of ? We have had much Clamour against Popery and Dispensations : But what Dispensations, pray, does the Protestant Religion give for such Practices as these ?

*Mr. Jennings.* My Lord, We have done with our Witnesses.

*L. C. J.* Then you that are for the Prisoner, this is the Time to make your Defence.

*Mrs. Lisle.* My Lord, I knew of no Body's coming to my House, but Mr. *Hicks* ; I heard there were Warrants out against him, for Preaching in private Meetings, but I never heard that he was in the Army, or that *Nelthorp* was to come with him : Nor did I hear *Nelthorp* named, till they came to my House. And, my Lord, I abhorred both the Principles and Practices of the late Rebellion : Besides, my Lord, I should have been the most ungrateful Person living, if I acted any Thing against

The Prisoner  
enters upon  
her Defence.

againſt the King, to whom I was ſo much oblig'd for my Eſtate.

*L. C. J.* Ingratitude adds to the Load, and is the beſt Crime one can be Guilty of.

Objects, That  
the Traitor  
ought to be  
Convicted,  
before ſhe  
could be  
Try'd for  
harbouring  
him.

Page 408.

*Mrs. Liſle.* My Lord, had I been Try'd in *London*, I could have had my Lady *Abergavenny*, and ſeveral other Perſons of Quality, who could have teſtified, with what Detestation I have ſpoken of the late Rebellion; for I was all that Time at *London*, and ſtaid there till the Duke of *Monmouth* was Beheaded. And had I certainly known the Time of my Tryal in the Country, I could have had their Teſtimony here. But, my Lord, I am told, *That I ought not to be Try'd for Harboursing a Traytor, till that Traytor is Convicted.* Beſides, I will take my Death upon it, I never knew of *Nelthorp's* coming, till he came. Had I heard his Name, I ſhould have remembred his being in the Proclamation. As to what they ſay, of my denying *Nelthorp* to be in my Houſe; I was in a great Conſternation and Dread of the Soldiers, who were very rude, and could not be reſtrain'd by their Officers, from plundering my Houſe. And I beg your Lordſhip would not harbour an ill Opinion of me, from thoſe falſe Reports that go about me, concerning my conſenting to the Death of King *Charles* the 1ſt; for I was not out of my Chamber that Day he was Beheaded; and believe, I ſhed more Tears for him, than any Woman then Living, did: As the Counteſs of *Monmouth*, my Lady *Marlborough*, my Ld. Chancellor *Hyde*, and Twenty other Perſons of Quality could have witneſſed. And as I hope to attain Salvation, I never did know *Nelthorp* before in my Life.— I was, indeed, willing to ſhelter *Hicks*, knowing him to be a Diſſenting Preacher, and that there were Warrants out againſt him upon that Account. And I came into the Country, but that Week the Man came to me from *Hicks*, to know if he might be entertained in my Houſe? And I beſeech your Lordſhip, to believe I had no Deſign to Harbour him, but as a Nonconformiſt? which I knew was no Treason. Nor can it be ſuppoſ'd, I would venture the Ruin of my Self and Children,



Children, to harbour *Nelthorp*, whom I never knew, but had heard he was in the Proclamation.

Then she call'd *George Creed* as a Witneſs for her.

She calls a Witneſs.

He depos'd, That he heard *Nelthorp* ſay, that my Lady *Liſle* knew nothing of his coming, nor knew his Name, till he told it to Collonel *Pennraddock* when he was taken.

*L. C. J.* That's nothing, She is not Indicted for Harboursing *Nelthorp*, but *Hicks*.

*Mrs. Liſle.* My Lord, I know the King is my Sovereign, and if I would have ventur'd my Life for any Thing, it ſhould have been to ſerve him; I owe all that I have in the World to him; and though I could not fight for him my ſelf, my Son did; he was actually in Arms on the King's Side in this Buſineſs; I inſtructed him always in Loyalty, and ſent him thither: It was I that bred him up to fight for the King.

She ſays her Son was actually in Arms againſt *Monmouth* by her Direction.

Then the Lord Chief Juſtice directed the Jury.

“ He told them their Oath ſufficiently directed them in their Duty, *viz. That they ſhould find according to their Evidence, &c.* And that as on one Side they were not to be mov'd by Compaſſion to the Priſoner, or any Allegations or Proteſtations of her Innocence; ſo neither on the other Hand were they to be influenc'd by any thing that came from the Court, or that was inſinuated by the King's Council. Then he ſhews them what Deſtruction would have been brought upon the Nation if the late Rebellion had ſucceeded; how we were deliver'd from infinite Confuſion and Miſery by the happy Reſtauration, and the Bleſſings the Nation enjoyed under the Government of the late and preſent King; and thought it ſtrange that ſome People, inſtead of making Returns of Reſpect and Duty to their Sovereign, ſhould be ſo blinded and bewitch'd by Faction and Sedition, that a Rebellion ſhould begin this Reign, and all the Poiſonous Arts of Diſobedience be us'd to incite the King's Subjects againſt him, eſpecially when we had ſo lately felt the Miſeries of a Civil War: And ſtranger ſtill he thought it was, that thoſe Miſ-

“ creants

Page 308.  
The Chief Juſtice directs the Jury.

Page 510. "creants who were concern'd in the Rebellion;  
 "when they came to die, should invoke the  
 "Great God to testify they died for the Sake of  
 "Religion, and call themselves Martyrs for the  
 "Cause of God, when they suffer'd for Treason.  
 "He observ'd, That that Arch-Rebel *Monmouth*  
 "was arriv'd to that Heighth of Impudence and  
 "Villainy, as to bless God, that he could with  
 "Satisfaction reflect, that the two last Years of  
 "his Life had been regularly spent, when they had  
 "been spent in manifest Adultery, and in Rebel-  
 "lion against his Lawful Sovereign—— Then

Page 511. "he proceeded to sum up the Evidence, and  
 "takes Notice of the Ingratitude of the Prisoner,  
 "who confess'd she ow'd all she had to the late  
 "and present King, and yet entertain'd and har-  
 "bour'd Rebels; he remembred also, what Share  
 "her Husband had in the Death of King *Charles I.*  
 "but said, 'twas enough to answer for her own  
 "Guilt, and confess'd that ought not to be of any  
 "Weight now, any more than the Reports of her  
 "Rejoycing at the Death of King *Charles*: But  
 "he laid the greatest Stress upon that Part of the  
 "Evidence which says, she deny'd their being in  
 "the House when Colonel *Penruddock* came to  
 "search for them. This he look'd upon as a strong  
 "Circumstance that she was Conscious to their  
 "having been in the Rebellion.

Page 512. He said, "It was worth considering that Col-  
 "onel *Penruddock*, whose Father died for his Fi-  
 "delity to King *Charles*, should be made an In-  
 "strument in this Matter: Who was his Judge  
 "every body knew, [*Lisle, the Prisoner's late*  
*Husband, sat upon him*].

The Prisoner's  
 Husband one  
 of K. Charles's  
 Judges: See  
 King Charles's  
 Tryal,

The Prisoner's  
 Husband one  
 of those who  
 condemn'd  
 Col. *Penrud-*  
*dock's* Father  
 to Die: See  
*Penruddock's*  
 Tryal.

Upon the whole he told the Jury, "That the  
 "Proof that had been given of the Fact she  
 "was charg'd with, was as plain as the Sun at  
 "Noon-Day, and laid it to their Consciences,  
 "telling them the Preservation of the Govern-  
 "ment, the Life of the King, the Safety and Ho-  
 "nour of their Religion, were at Stake; and they  
 "were not to be mov'd by the Prisoner's Age or  
 "Sex, but to go according to their Evidence, as  
 "they would answer it at God's Tribunal.

Jury-

*Juryman.* My Lord, We desire to know, Whether it be equally Treason to receive a Rebel before he is convicted of Treason, as it is after.

*L. C. J.* It is all the same: If he had been wounded and died of his Wounds, so as he could never have been Convicted, it had been all one.

*Then the Jury withdrew, and in about Half an Hour return'd.*

*Foreman.* My Lord, We have some Doubt whether she knew *Hicks* had been in the Army.

*L. C. J.* Did she not enquire of *Dunne*, If *Hicks* was in the Army? And when he told her he did not know, she did not say she would refuse him, but order'd him to come by Night; by which 'tis evident she suspected it: And did not he and *Nelthorp* discourse of the Battle and the Army, when they were at Supper? Come, Come, Gentlemen, 'tis a plain Proof. But if there were no such Proof, the Circumstances and Management of the Thing is as full Proof as can be; I wonder what it is you doubt of.

*The Jury having laid their Heads together about a Quarter of an Hour, found the Prisoner Guilty.*

The Lord Chief Justice told them, He thought in his Conscience the Evidence was as full and plain as could be; and if he had been one of them, If she had been his own Mother, he should have found her Guilty.

The 28th of *August*, 1685. the Lady *Lisle*, with some other Common Malefactors, were brought to the Bar to receive Sentence.

The Chief Justice, in his Speech before he pass'd Sentence, reminds the Lady of those solemn Protestations and Affeверations she had made of her Innocence; and tells her, that since the last Night they had received other Proof of her being Conscіous of the Guilt of those she harbour'd, and advises her to be Penitent, and that she would make some Recompence to the Justice of the Nation, by discovering the whole Truth of this Matter; for he told her, that without making Satisfaction for publick and private Injuries, she could never hope for the Mercy of God.

A Person harbouring a Rebel is a Traytor, tho' the Rebel never be convicted.

The Jury doubt whether the Prisoner knew *Hicks* had been in the Army.

The Chief Justice tells them the Proof is plain.

Page 513.  
She is Convicted.

The Chief Justice's Speech before Sentence.

Other Proof of her Guilt after the Trial.

Page 514.

Sentence'd to  
be Burnt alive  
that After-  
noon.

Then he pronounc'd Sentence upon the Lady *Lisle*, That she should be Burnt, &c. as usual where a Woman is Convicted of Treason; and having pass'd Sentence upon the Felons, he gave Orders to the Sheriff to see the Lady *Lisle* Executed that Afternoon; but intimated to the Lady, If she would confess the whole Matter, her Execution might be Respited.

But Repriev'd.

However, upon the Intercession of some Divines of the Church of *Winchester*, she was Repriev'd till *Wednesday* the 2d of *September*.

A Letter to  
the King in  
her Behalf, but  
to no Effect.

In the mean Time a Letter was dispatch'd to the Lord *Clarendon* by some Persons of Honour, to intercede with the King for a Reprieve, and my Lord *Clarendon* read the Letter to his Majesty, who answer'd he would do nothing in it, having left all to the Lord Chief Justice.

Petitions to  
be beheaded,  
which is  
granted.

A Petition was also preferr'd by the Lady *Lisle* to his Majesty, to alter the Manner of the Execution from Burning to Beheading. And several Precedents were produc'd to his Majesty, where the Execution had vary'd from the Judgment: As in the Case of the Duke of *Somerset*, condemn'd for Felony in the Reign of *Edw. VI.* The Lord *Audley*, 7 *Car. I.* Queen *Catherine Howard* for Treason, in the Reign of *Hen. VIII.* *Jane Grey* & *Mary*: And the Countess of *Salisbury*, who was Attainted of Treason *Anno* 1641. was Beheaded.

Page 515.  
See the Regist.  
Fol. 165.  
Precedents  
where the Ex-  
ecution has  
varied from  
the Judgment.

Whereupon the King sign'd a Warrant for her being Beheaded, and directed therein, that her Head and Body should be deliver'd to her Relations, to be Interr'd as they saw fit.

She is Execu-  
ted.

And accordingly Execution was done on *Wednesday* the 2d of *September*, in the Afternoon, in the Market-Place of the City of *Winchester*.

In her Dying Speech she intimates, That she apprehended the Jury had found her Guilty without sufficient Evidence; indeed she says since her Tryal, some Discourse she had with *Nelthorp* had appear'd under her Hand; but this being after Conviction, could be no Evidence to them.

Her Attainder  
Revers'd.

In the First of *William* and *Mary* her Attainder was Revers'd.

Page 516.

The



*The Arrignment of JOHN FERNLEY, Page 577.*  
 WILLIAM RING, ELIZABETH GAUNT,  
 and HENRY CORNISH, *Esq*; 19 Octob.  
 1685.

*Clerk. Set John Fernley to the Bar.*

“ THE Indictment sets forth, That the said *John Fernley*, the 20th of *August*, in the First Year of King *James* the Second, and divers other Days and Times, as well before as after, at the Parish of *St. Mary Mat Fellow*, alias *White-Chappel*, in the County of *Middlesex*, knowing one *James Burton* to be a false Traytor and Rebel, did harbour, conceal and sustain him in his Mansion-House, situate in the Parish aforesaid, against the Duty of his Allegiance, and against the Peace of our said Lord the King, &c.

The Indictment of *Fernley* for High Treason, in Harboursing *James Burton*, a Traytor.

*Clerk. How say'st thou, John Fernley, Art thou Guilty, &c.*

*Fernley. Not Guilty.*

*Clerk. Set William Ring to the Bar.*

“ The Indictment against him sets forth, “ That the said *William Ring*, the 20th of *July*, in the First Year of King *James* the Second, and divers other Days and Times, as well before as after, at the Parish of *St. Clements Daves*, in the County of *Middlesex*, and well-knowing *Joseph Kelloway* and *Henry Lawrence* to be False Traytors and Rebels, did harbour, conceal and sustain them, in the Dwelling-House of him the said *William Ring*, situate in the Parish and County aforesaid, against the Duty of his Allegiance, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided, &c.

The Indictment of *Ring* for High Treason, in Harboursing *Joseph Kelloway* and *Henry Lawrence*, Traytors and Rebels.

*Clerk. How say'st thou William Ring, Art thou Guilty, &c.*

*Ring. Not Guilty.*

Arraignment  
of *Cornish*.

*Clerk.* Set *Henry Cornish* to the Bar. *Henry Cornish*, Hold up thy Hand.

*Mr. Cornish.* My Lord, I hope I shall be allow'd what is Customary in such Cases.

*Lord Mayor.* What is it you would have?

*Justice Jones.* Would you not be Arraign'd, *Mr. Cornish*? After you have been Arraign'd, and have Pleaded, you may Speak.

*Mr. Cornish.* Is it reasonable, Not to have above half a Days Time for Preparation for my Tryal, and no Counsel allow'd me.

*Sir Tho. Jenner.*

*Recorder.* Nor ought, without Leave of the Court, or by his Majesty's special Appointment.

*Cornish.* My Lord, Ought not I to have a Copy of the Pannel? It is a Thing never deny'd.

*Recorder.* It has been deny'd often. Come, *Mr. Cornish*, You must plead.

Page 579.

*Mr. Jones.* If you will not plead, I will move the Court to Record your standing Mute.

*Cornish.* I have known that this Court hath heard what the Prisoner hath to say at the Bar; and I have more to say perhaps, than any Man that ever stood at this Bar.

*Recorder.* When you have pleaded you have Time to speak.

*Clerk.* *Henry Cornish*, Hold up thy Hand, (*which he did.*)

The Indictment of *Cornish* for High Treason in Promising to be Aiding and Assisting to the Duke of Monmouth, *Ld. Russel*, &c. in carrying on their Conspiracy.

The Indictment sets forth, " That the said *Henry Cornish*, the 30th of *May*, in the Thirty Fifth Year of King *Charles* the Second, and divers other Days and Times, as well before as after, at the Parish of *St. Michael Bassishaw*, *London*, Falsly, Maliciously and Trayterously, knowing *James* the late Duke of *Monmouth*, *William Russel*, Esq; and *Thomas Armstrong*, Kt. and divers other Rebels and Traytors, to have Conspir'd the Death of the said late King, did then and there promise, That he the said *Henry Cornish* would be Aiding and Assisting to them, in Carrying on the said Conspiracy, against the Duty of his Allegiance, &c.

*Clerk.* How say'st thou, &c.

*Cornish.* This is a heinous Charge.

*Council.*

*Council.* Are you Guilty, or Not Guilty.

*Cornish.* Not Guilty.

*Clerk.* Culprit, How wilt thou be Try'd?

*Cornish.* By the Great God of Heaven, and my Country.

*L. C. J. Jones.* I don't know in what State Things are here in the Court.

*Clerk.* He is Arraign'd.

*L. C. J.* Why don't you go on with the Jury?

*Cornish.* My Lord, I humbly pray your Lordship. I have some ground for it.—

*L. C. J. Jones.* You shall be heard in good Time, Sir.

*Cornish.* My poor Children last Night presented a Petition to his Majesty, and he was pleased to refer it most graciously to my Lords the Judges, and I now make my Application to your Lordships.

*L. C. J. Jones.* We will stay till Mr. Attorney and Solicitor come, to know whether there be any Order from the King concerning you.

*Mr. North.* We have Arraign'd one Fernley, if you please to try him. (*Who, with Ring, was brought to the Bar.*)

The Jury Sworn.

*Clerk.* Set William Ring to the Bar.

*Att. Gen.* We will first shew the Record of the Conviction of Kelloway and Lawrence. (*A Copy of the Record was produc'd, and Mr. Harcourt Sworn.*)

*L. C. J. Jones.* Is that a true Copy of the Record?

*Harcourt.* Yes.

*L. C. J. Jones.* See what they have done.

*Clerk.* They are Indicted of Treason for Levying War against the King, and have confess'd the Indictment on their Arraignment: And the Judgment on the Indictment is as usual in Cases of Treason.

*Att. Gen.* Now we will shew, that between the Treason and their Conviction this Prisoner did receive them,

Page 580.

Ring's Tryal begins.

A Copy of the Record of Kelloway's Conviction Sworn.

Between the Treason and the Conviction on the Prisoner receiv'd them.

Mr. Barrington was Sworn.

Barrington deposes he saw the Traytors at the Prisoner's House. Page 581.

*Barrington.* The 11th of July last I was Abroad about my Master's Business; and when I return'd, I was told, Mr. Ring, who lives at the Bible in *Witch street*, was to speak with me, and that Mr. Lawrence was at his House. I went thither, and found Mr. Lawrence lying upon the Bed weary and tir'd; and when I had been there a while, one *Kelloway* came in. They said, they came out of the West Country on Friday Night, and I saw them on Saturday. I call'd there on Wednesday the 15th at Night, and Mr. Lawrence told me they were going from thence, to the *Pewter Platter* in *St. John's*. I was with Mr. Common Serjeant at the *Castle Tavern* without *Temple-Bar*, when he sent for Mr. Ring, to examine him about these Men. Mr. Ring said, he knew nothing of these Men, till Mr. Common Serjeant order'd his House to be search'd, and a Paper was found there and produc'd to Mr. Ring.

Mr. Barrow was Sworn.

Barrow deposes that the Prisoner knew they had been in the Rebellion.

*Barrow.* I heard Ring confess to my Lord Mayor in July last, That Lawrence and Kelloway told him, they had both been in the late Western Rebellion in *Monmouth's* Army, and that after that, he had lodg'd them Two or Three Nights in his own House.

Mr. Crisp was Sworn.

Crisp deposes, he confess'd he lodg'd them.

*Crisp.* I went to search Mr. Ring's House, and in the Window there was a Letter under Mr. Lawrence's Hand, seal'd up, and directed to *Newbury*, for a Horse which he had stolen from his Master, and left at *Newbury*. Ring own'd, when the Letter was produc'd, that he had such a Cousin: And when he came to the *Sessions-House*, Lawrence and Kelloway were produc'd before him, and were examin'd what Account they had given to him when they came to his House: They told him, After the Duke of *Monmouth* was beaten they ran away to *London*, and Kelloway being his Cousin, brought Lawrence with him; that they lay there Friday Night, Saturday Night, Sunday Night and Monday Night; and Ring confess'd he lodg'd them Two or Three Nights.

Mr.



Mr. *Hardisty* was Sworn.

*Hardisty*. This is *Ring's* Examination, taken before my Lord Mayor; it was read to him half a Dozen Times, I believe.

*The Examination of William Ring, &c, of, &c. taken before the Right Honourable Sir James Smith, Kt. Lord Mayor of the City of London, this 18th Day of July, 1685. who being examin'd, saith as followeth.*

*Ring's Examination read.*  
Page 582.

" That *Joseph Kelloway* and one *Henry Lawrence*, the said *Kelloway's* Acquaintance, came to this Examinant's House on *Friday* or *Saturday* last; that this Examinant did ask of *Kelloway*, (being this Examinant's Kinsman) What did drive them to Town? that they told this Examinant, that they went to *Monmouth*, that he was routed, and that brought them to Town, or to that Purpose; that the Night they came, this Examinant told them, He was unwilling to Lodge them; that he did Lodge them, after this Discourse, *Saturday*, *Sunday* and *Monday* Nights, and they Din'd twice with this Examinant, and that *Kelloway* and his Acquaintance told him, they left their Horses at *Newbury*, &c.

*Att. Gen.* Call Mr. *Richardson* to prove that these were the same Men that were carry'd down.

*Richardson* Sworn.

*Richardson*. Those two Persons, *Joseph Kelloway* and *Henry Lawrence*, that were Committed for being in the late Rebellion, I carried them both down into the *West*, where they were both Convinced: One is Executed, and the other hath a Reprieve: *Henry Lawrence* was Captain *Hunt's* Man; he run away with his Horse and Arms.

*Richardson* deposes, that the Persons convicted were the same Persons *Ring* harbour'd.

*L. C. J. Jones*. What do you say for your self?

*Ring*. I acknowledge I did lodge them, but I did not understand what Design they had been upon.

*Ring's Defence.*

*Just. Withins*. It is under your Hand,

*Ring*. If it be, I never said it: When it was taken I was in Amaze; I was order'd to put my Hand to it.

Page 583.

Direction to  
the Jury.

Treason to  
Harbour a  
Rebel.

*L. C. J. Jones.* Did you not confess it?

*Ring.* I did not confess it.

*L. C. J. Jones.* "Gentlemen of the Jury, The Prisoner stands indicted of High Treason, for receiving *Joseph Kelloway* and *Henry Lawrence*, who were Traytors, and known to him to be Traytors, and harbouring them in his House, and giving them Entertainment and Comfort. And though this Man himself were not in actual Rebellion; yet if he do receive any that he knows to have been so, he is equally Guilty, he is a principal Traytor by the Judgment of the Law." And having repeated the Evidence, he directs them to find the Prisoner Guilty.

*Fernley's Tryal.*

Page 584.

Record of Bur-  
ton's Outlawry  
produc'd.

*Clerk.* *John Fernley*, Hold up thy Hand; You stand Indicted, &c.

*Sol. Gen.* This Prisoner stands Indicted of High Treason, for receiving and harbouring one *James Burton*, who was Guilty of Treason, knowing him to have been Guilty of Treason: And, first, we will shew the Record of the Outlawry.

*Clerk.* An Indictment preferr'd against *James Burton*, and divers others for High Treason, for which the said *Burton* and others stand Outlaw'd, by the Return of *Samuel Dashwood*, Esq; and *Sir Peter Daniel*, Sheriffs. This is the Record it self, my Lord.

*Mr. Ward* was Sworn.

*Just. Withins.* Is that the Record?

*Ward.* Yes it is.

*Mr. Hardesty Reads.* On Monday, next after the Feast of *St. Michael*, the said *Richard Rumbald*, *James Burton*, &c. are Outlaw'd, and every of them is Outlaw'd. — It is November was Twelve Month.

*James Burton* was Sworn.

*Burton* himself  
an Evidence  
that *Fernley*  
harbour'd  
him.

*Burton.* I came out of the West into London, from *Monmouth's Army*, on a Wednesday Night, about three Weeks after the Rout: I came Home to my Wife, and staid there till Friday Night; and on Friday Night she got me a Lodging at *Mr. Fernley's*, whither I went about Ten a Clock at Night, and

and staid there till *Sunday* Night, when I was taken.

*Just. Withins.* Did you see Mr. *Fernley*?

*Burton.* I saw him at Dinner on *Sunday*, and not before.

*L. C. J. Jones.* What was the occasion of your Absence for two Years?

*Burton.* I was in the Proclamation, for being with *Rumbald* at the *Mitre* Tavern.

*Just. Withins.* What Discourse had you with *Fernley* at Dinner?

*Burton.* We discoursed about the Army's being Routed, and, I believe, I told him I was there.

*J. Withins.* Did he know you fled upon the Account of the Proclamation before?

*Burton.* He might know it by others, but not by me.

*Mary Burton Sworn.*

*Mr. North.* How came this Man to Lodge at *Mr. Fernley's*? Page 585.

*Mrs. Burton.* Because I thought he was not Safe at Home; and being acquainted with *Mrs. Fernley*, I thought I might have Entertainment there.

*Mrs. Burton's Evidence of her Husband's being at the Prisoner's House.*

*L. C. J. Jones.* What Discourse had they at Dinner on *Sunday*?

*Mrs. Burton.* While I was Eating, I did not mind.

*Mr. North.* Did you speak with Mr. *Fernley* your self?

*Mrs. Burton.* I did not speak with Mr. *Fernley* himself.

*Mr. North.* When you saw him at Dinner, Had you any Discourse about your Husband's going away upon the Proclamation?

*Mrs. Burton.* I had not indeed.

*Mr. Reynolds Sworn.*

*Reynolds.* Towards the beginning of *August* last, hearing that there were several that were in the *West*, about *Wapping*, I took the Lieutenant of the Tower's Warrant, and went, on *Sunday* about Eight a Clock at Night, and took Mr. *Burton* in *Mr. Fernley's* House; and Mr. *Fernley*, being Master of the House, I wish'd the Constable to secure him. We found *Burton* one pair of Stairs up the Chimney,

*Reynolds deposes he apprehended Burton at the Prisoner's House.*

Chimney, and while we were there, he fell down with all the Soot about him. *Fernley* was one pair of Stairs higher.

*Burton's Pardon produc'd, to make him an Evidence.*

*Sol. Gen. James Burton* being Outlaw'd, he would not be a Competent Witness; but we have here a Pardon, whereby that Outlawry is discharg'd; so that he is now a Legal Witness.

*The Pardon was produc'd and read.*

Page 586.  
*Fernley's Defence, that he design'd to have had Burton committed the next Day.*

*L. C. J. Jones*, What say you Mr. *Fernley*?

*Fernley*. My Lord, I did not know when *Burton* came to my House, till Sabbath Day at Dinner; my Wife told me he came on Friday Night. When I came from Church, I went up to Dinner, and saw him: I ask'd, What in the Name of God brought him there! And he told me how he had made his Escape. And about half an Hour after we had Din'd, one knock'd at the Door (it was one *Gaunt*) who ask'd If Mr. *Burton* was within? I brought him up with me, and *Burton* thank'd Mr. *Gaunt* for a Guinea he had sent him. *Gaunt* said, in a little time, he should have Passage for him beyond Sea; and that some Gentlemen were gone a while ago, and named several Gentlemen that were to go, as Col. *Danvers*, and Major *Wildman*. Upon this Discourse, I consider'd how I might do his Majesty a piece of Service; but thought it better not to seize him, till I had acquainted some Magistrate; and did think, in the Morning, to have gone to a Justice of Peace, and have had him apprehended: *Burton*, I knew was secure, he could not escape my Hands; and I had no Design of concealing him. I knew there was 100 Pound for him in the Proclamation, and being a poor Man, there was no Obligation on me to conceal him, and ruin my Self and Family.

*L. C. J. Jones*. Could not you have sent your Boy, when he had discoursed thus Treasonably with you? But keep him in your House seven or eight Hours, after you had entertain'd him at Dinner. Are you a Constable?

*Fernley*. I am, and upon Account of my Office, was the more secure.

*L. C. Burton*. If you had a Loyal Heart, you should have kept *Gaunt*.

*Fernley*



*Fernley.* My Lord, I let *Gaunt* go, because he promis'd to come again next Day ; and there being a Proclamation out against *Danvers* and *Wild-man*, and hearing *Gaunt* discoursing of their Design, I thought (he promising to come again next Day) to know how they were to go.

*J. Levins.* If you had had an honest Intention, you would have gone to some Justice of Peace, and acquainted him with it. Have you any Witnesses?

*Mr. Rush* was call'd.

*Rush.* I formerly knew the Man ; he was a Barber, and us'd to Trim me. I always look'd upon him to be a sober Man.

*Cryer.* Capt. *Haddock.*

*Officer.* He wont come in.

*L. C. J. Jones.* Well, well, Let him stay there.

*Cryer.* Mr. *Dove.*

*Officer.* He wont come in, I can't make him come in.

*L. C. J. Jones.* Here are none that will give any Testimony for you.

*Mr. Whittal* call'd.

*Whittal.* All I know is, He behav'd himself very well, and went to Church, as other Neighbours did ; and I never heard him speak against the Government.

*Fernley.* This, my Lord, may give some Account, that I had no Design against the Government. I am a poor Man, and owe a great deal of Money. I knew there was an 100 Pound for securing *Burton*, there was no Gain by concealing him : He was not a Person could requite me, that I should harbour him, and lose 100 Pound.

*L. C. J. Jones.* This argues you to be a stronger Confederate, that you were so firm to your Party, you would not gain 100 Pound, though you might have it, for doing your Duty.

*Fernley.* My Lord, I look'd upon it as sure as if I had it in my Pocket. I knew nothing of him, till Sabbath Day at Noon ; and I did not design to conceal him afterwards, any further than to serve the King.

*L. C. J.*

Page 587.

The Prisoner calls Witnesses to his Reputation.

Page 588.

Direction to  
the Jury.

*L. C. J. Jones.* " Gentlemen of the Jury, this Prisoner stands Indicted, for Harboursing and Relieving one *James Burton*, knowing him to have committed Treason. You are to be acquainted, that this *James Burton*, was not only Guilty of the late Rebellion in the *West*, but he was likewise charg'd by Process, with being Guilty of the Plot at the *Rye-House*, and thereupon there was such Proceedings by Law, that he was Outlaw'd: So that if there were no more, if you are persuaded that he is the Person Guilty, whether he were in the *West* or no, that may induce you to find this Indictment. But that is not all, you have expresse Testimony from *Burton* himself, who fled from his Neighbourhood almost two Years; and yet he recieves this *Burton* into his House. But lest you should want another Witness, you have him plainly confessing it, That *Burton* did tell him, he had been in the Rebellion in the *West*, and came thither for Shelter. And having Repeated the rest of the Evidence, he leaves it to the Jury.

Then the Jury withdrew to consider the Evidence.

*Elizabeth Gaunt*  
Arraign'd.

*Clerk.* Set *Elizabeth Gaunt* to the Bar, (which was done.) *Elizabeth Gaunt* hold up thy Hand, (which she did.) Thou stand'st Indicted, &c.

Her Indictment for High Treason, in maintaining the said *Burton*, and furnishing him with Money.

Page 589.

The Indictment sets forth, " That the said *Elizabeth Gaunt*, Wife of *William Gaunt*, of the Parish of *St. Mary White-Chappel*, in the County of *Middlesex*, Yeoman; the 24th Day of September, in the 36th Year of the late King *Charles the 1st*; and divers other Days and Times, as well before as after, at the Parish and Ward aforesaid; well knowing one *James Burton* to be a false Traitor and Rebel, the said *James Burton* in a certain House, to the Jurors unknown, did knowingly, secretly, and traiterously Sustain and Maintain: And Meat and Drink, and Five Pound in Money, for the Maintenance and Sustenance of the said *James Burton*, to him Maliciously and Traiterously did deliver. Against the Duty of

" her

" her Allegiance, and against the Peace, and a-  
 " gainst the Form of the Statute, &c.

To which Indictment she pleaded *Not Guilty*.

Then the *Middlesex* Jury returning, Mrs. *Gaunt* was set aside, and *King* and *Fernley* brought to the Bar; who were both brought in *Guilty*. *King and Fernley* Convicted.

*Clerk.* Set *Henry Cornish* to the Bar, and *Elizabeth Gaunt*, (which was done.)

*Cornish.* My Lord, I humbly pray I may have Time allow'd me for my Tryal: I have had no Council, no Pannel, or Pen, Ink, or Paper. My Lord, his Majesty was petition'd last Night, by my Children, and was pleas'd to refer it to my Lords the Judges. *Mr. Cornish* moves to put off his Tryal.

*Att. Gen.* The King left you to the Course of the Law.

*L. C. J. Jones.* You were Apprehended on *Thursday*, this is almost a Week; you knew what you was Charg'd withal.

*Cornish.* I did not know what I was Charg'd withal; and no Friend, but my Wife, was permitted to come to me, and that was in the presence of Major *Richardson*.

*Att. Gen.* He had Pen and Ink as soon as he petition'd for it. Pen and Ink allow'd upon Petition.

*Just. Withins.* It is never allow'd in such Cases, but upon Petition.

*Cornish.* My Lord *Ruffel* had seven or eight Days allow'd him. Page 590.

*J. Levins.* But that is not necessary: Prisoners that are Tried here, generally have no Notice at all. If one Man hath a singular Favour, another Man cannot claim it. Not necessary to give Prisoners any Notice of Tryal.

*L. C. J. Jones.* My Lord's Tryal, I think, was put off but till the Afternoon.

*Cornish.* With Submission, I think he had eight Days assign'd him: But I have a material Witness 140 Miles off.

*L. C. J. Jones.* Why did you not set forth that in your Petition to the King? Were not you committed for High Treason?

*Cornish.* My Lord, the Commitment did not mention this King or the last, and I am not skill'd in

in these Things: I humbly pray your Lordship to consider it.

*L. C. J. Jones.* Mr. Attorney, Have you any Directions?

*Att. Gen.* No, my Lord.

*J. Withins.* You should have apply'd your self to the King, it does not lie in our Power. And here is Mr. *Bridgman* on the Bench, who says, there was a Petition before the King, for putting it off, and the King absolutely refused it.

*Cornish.* I desire a Copy of the Pannel.

*L. C. J. Jones.* You shall have a Copy of the Panel here.

*Cornish.* My Lord, my Witnes is in *Lancashire*, I beseech your Lordship to consider me.

*L. C. J. Jones.* Mr. Attorney, If you pray he may be Try'd, we can't deny it.

*Att. Gen.* I can't defer it. And why you should be in another Condition than other Prisoners, I don't know? You have not deserv'd so well of the Government.

*Cornish.* I hope I may have Pen and Ink.

*L. C. J. Jones.* Ay, Ay.

The Jury were call'd, and after Thirty five were Challeng'd by Mr. *Cornish*, the following Gentlemen were sworn.

|                          |   |                            |
|--------------------------|---|----------------------------|
| <i>Thomas Rawlinson,</i> | } | <i>William Cloudestly,</i> |
| <i>Thomas Langham,</i>   |   | <i>Richard Holford,</i>    |
| <i>Ambrose Istead,</i>   |   | <i>William Longboat,</i>   |
| <i>Thomas Pendleton,</i> |   | <i>Steven Coleman,</i>     |
| <i>John Price,</i>       |   | <i>Robert Clavel,</i>      |
| <i>Thomas Oneby,</i>     |   | <i>William Long.</i>       |

Proclamation being made, *If any one can Inform, &c.* Mr. *Cornish* was set aside, and *Elizabeth Gaunt* set to the Bar.

*Att. Gen.* The Prisoner stands Indicted for Harboursing of *Burton*, who was a great Traitor, and for procuring a Way for his Escape beyond Sea; and also, for giving him Five Pound. She and her Husband, were the great Brokers, for carrying over such Traitors as my Lord *Shafesbury*, and others. Call *Burton* and his Wife.

*Burton.*

The Court  
can't defer the  
Tryal, with-  
out the At-  
torney's Con-  
sent.

Tryal of Eli-  
zabeth Gaunt.  
Page 591.



*Burton Sworn.*

*Att. Gen.* Pray give an Account, What pass'd between you and Mrs. Gaunt? And first, Whether you were engaged in the Matter of the Rye?

*Burton.* Mr. Keeling came to me one Saturday Morning, and desired me to meet him at the *Mitre Tavern* within *Aldgate*, and ask for Number Five. I met a Countryman there, who had but one Eye, he ask'd for the same Number. In a little while Keeling came in, and brought Barber and Thomson; but no Body spoke any Thing, hardly, but Rumbald. (that was Rumbald with one Eye) He talk'd about Privileges, and such Things; and said, *His House was a convenient House, and there they might do the Business.* Before they had done, I found they design'd to Kill the King; but nothing troubled him, but killing the Postillion. A while after, Mr. Keeling went and made a Discovery; and I was in the Proclamation for being at that Meeting, and absconded my self. About two Months after, Mrs. Gaunt came to me, and told me, there were some Persons about to make an Escape, and would have me go along with them. She had me into *Bishopsgate street*, and in *Half-Moon Alley*, in a little Brewhouse, up Stairs in a Chamber, there were both the Rumbalds, one of them did not go, the other I lay with all Night, and in the Morning we went down to *White-Chapel*, to take Horse for *Rochford Hundred*, where we staid for the Vessel two Days. It was a small Vessel, and Leaky, and ill Mann'd, and the Weather bad; so we agreed to come back to *London*. I lay by a great many Months after. Then Mrs. Gaunt came to me again, and told me there were two Persons going, and I might have Passage if I would go: And a Boat being ready at the Water-side, carried me to *Gravesend*; from whence, I went in a Vessel to *Amsterdam*.

*Burton's Account of his Concern in the Rye-House Plot.*

And of Mrs. Gaunt's assisting him to Escape.

*Att. Gen.* How came Mrs. Gaunt to take so much Care of you?

*Burton.* I suppose, because she knew, I knew her Husband was concern'd.

*Att. Gen.* What had her Husband done?

*Burton.*

*Burton.* He would have had me gone with him and Capt. *Walcot* to the *Tower*, to see what Force there was of Soldiers. And Capt. *Walcot* said, He had a Design to take an House over against the *Tower*, to put in some Men there, to break in upon the *Tower*; and *Gaunt* was with him.

*Mr. North.* Did Mrs. *Gaunt* assist you with any Money?

That she gave him 5 l.

Page 592.

*Burton.* I believe about Five Pound.

*Att. Gen.* Did she know what you were Conceal'd for?

*Burton.* Every Body knew that, because I was in the Proclamation.

*Att. Gen.* Who were the two Persons that were prepar'd to go with you?

*Burton.* One was *Patchill*, he was kill'd in the Fight: The other liv'd in *Southwark*, I never saw him before. She directed me, that when I came to the Boat, if I knew any Body, I should not take notice I knew them.

*Mary Gilbert*, *Burton's* Daughter, was Sworn.

*Mary Gilbert.* Mrs. *Gaunt* came to our House that Night my Father went away; I never heard a Word of the Discourse that pass'd: I always went out of the Way, because they were not willing I should hear. Mrs. *Gaunt* carried him to a House without *Bishopsgate*, and there I saw a Man that had but one Eye, a Full set Man, full of Pockholes; but I never saw him before nor after.

*L. C. J. Jones.* Do you know Why your Father went away?

*Mary Gilbert.* He went upon Account of the Proclamation.

*Mary Burton* Sworn.

*Att. Gen.* How came Mrs. *Gaunt* to inquire after your Husband?

*Mrs. Burton.* It was at my Daughter's House; She said, if I was willing my Husband should go away, she would take Care.——

*Com. Serj.* Upon what Account did she come to you, to secure your Husband?

*Mrs. Burton.* Upon the Account he was in the Proclamation; and, I thought within my self, for fear

*Mrs. Burton* deposes, she would have assisted her Husband to Escape.

fear my Husband should know any thing against her Husband.

*Att. Gen.* When your Husband went away, and his House was search'd, How far did she live from you? Page 593.

*Mrs. Burton.* She had Lodgings at the upper end of *Old Gravel-lane*, and my Daughter in the middle of *Gravel-lane*, in *Worcester-street*.

*Att. Gen.* Was it taken Notice of all over the Street, that the House was search'd, and your Husband gone?

*Mrs. Burton.* Yes, Yes.

*L. C. J. Jones.* Woman, What say you to this Evidence?

*Mrs. Gaunt.* I did not contrive to send him away.

*L. C. J. Jones.* The Woman, *Burton*, and the Daughter say so, and you gave him Money afterwards. He swears it; Did you, or did you not?

*Capt. Richardson.* She says, She is not come here, to tell your Lordship what she did.

*L. C. J. Jones.* Did you not hear that *Burton's* Name was in the Proclamation about *Rumbald's* Plot?

*Mrs. Gaunt.* It's like I might.

*L. C. J.* And yet you would help him to Escape.

*Mrs. Gaunt.* He says so.

*L. C. J.* He swears so.

*Mrs. Gaunt.* And is that sufficient?

*Justice* ——— Ay, and another swears it; and that is sufficient.

*Mrs. Gaunt.* Not about the Money.

*L. C. J. Jones.* Did you know his House had been search'd to find him?

*Mrs. Gaunt.* I did not know it a great while: I might know it since.

*Here Burton's Pardon was produc'd again.*

*J. Withins.* Now he is a good Witness, Gentlemen.

*L. C. J. Jones.* "Gentlemen of the Jury, This Direction to  
"Woman stands Indicted for High Treason, &c. the Jury.

*After he had summ'd up the Evidence, he concluded,* Page 594.

"If you believe, she did know or believe *Burton* Aiding a  
"to have been Guilty of that Treason, and that Traitor, Treas-

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E e

"she son.

“ she did help to Convey him away, as the Wit-  
 “ nesses have prov’d that she did, by giving him  
 “ Money, and solliciting him, several times, to be  
 “ gone; then you ought to find her Guilty.

Then the Jury desiring to ask a Question, *Bur-*  
*ton* was call’d again; but being out of Court, was  
 call’d for, and *Mr. Cornish* was set to the Bar.

*Clerk.* *Henry Cornish* hold up thy Hand, &c.  
 The Jury are Charg’d with him.

*Mr. Phipps.* The Prisoner at the Bar stands In-  
 dicted, for that he, knowing the late Duke of *Mon-*  
*mouth*, *William Russel*, Esq; the late Lord *Grey*, and  
 other Traitors, had Conspir’d the Death of the  
 late King, and to raise Rebellion in this Kingdom,  
 did promise to Aid and Assist them.

*Mr. Burton* came in.

The Jury re-  
 turn to hear  
 further Evi-  
 dence about  
*Gaunt*.

*L. C. J. Jones.* You said you reciev’d Five Pound  
 of *Elizabeth Gaunt*, Did she owe you any Money?  
 or, Was it to assist you in your Escape?

*Burton.* She knew I was bare of Money, and  
 gave it me freely.

*L. C. J. Jones.* Was it at the Time you went  
 away?

*Burton.* Yes.

*Com. Serj.* Who paid your Boat Hire?

*Burton.* I don’t know.

*Cornish.* I desire the Witnesses may be kept  
 apart.

*Mr. Cornish’s*  
*Trial pro-*  
*ceeds.*

*Att. Gen.* *Mr. Rumsey*, Pray give an Account of  
 the Insurrection that was to have been in *England*,  
 in the late King’s Time? and, What Concern the  
 Prisoner had in that Affair?

*Rumsey* depo-  
 ses, the Priso-  
 ner was at the  
 Consult at  
*Sheppard’s*.

*Rumsey.* About the latter end of *October*, or the  
 beginning of *November*, my Lord *Shaftsbury* desi-  
 red me to go to *Mr. Sheppard’s* House, where there  
 was a Meeting of the Duke of *Monmouth*, my Lord  
*Russel*, my Lord *Grey*, Sir *Thomas Armstrong*, *Mr.*  
*Ferguson*, and *Mr. Sheppard*. I came late there my  
 self, and they were just going away: I told them  
 my Message, and they told me they were disap-  
 pointed by *Mr. Trenchard*. I had not been there a  
 quarter of an Hour, but *Mr. Sheppard* was call’d:  
 He went down, and brought up Alderman *Cornish*.  
 When *Mr. Cornish* came into the Room, he made  
 his



his Excuse that he did not come sooner; and said, he could not stay with them, because they were to meet that Night about their Charter. Upon that, Mr. *Ferguson* pull'd a Paper out of his Bosom; they told him, they had that Paper read, and desir'd to read it to him. Mr. *Ferguson* read it; and after he had read it, they ask'd him, How he lik'd it? And he did say, he lik'd it very well.

Page 595.

*L. C. J. Jones.* What were the Contents of that Paper?

*Rumsey.* The first part, complain'd of the Government of the late King; there were two Points in it, I remember very well, that they would declare for; one was, *Liberty of Conscience*. And t'other, *That all those that would assist in the Insurrection, who had any Lands of the Church, or the King's, in the late War, should have them restor'd to them.* It was a Declaration to be disperfed upon the Rising.

*Att. Gen.* Was there a Rising intended at that Time?

*Rumsey.* Yes; And they met there for that purpose: And Mr. *Trenchard* was the Man to manage the Business about *Taunton*, and he disappointed them.

*Att. Gen.* What was your Message from my Lord *Shafisbury* to them?

*Rumsey.* It was to know, What Issue they had come to about the Rising, and to press them to it? For such a Matter was not to be long kept a-Foot: Either let them come to a Resolution to Rise, or let it fall for good and all. Mr. *Cornish* said, he lik'd it very well, and that poor Interest he had, he would join with it.

And promised his Assistance.

*Cornish.* I declare I never was at any Consult in my Life, at Mr. *Sheppard's*; but I have had great Dealings with Mr. *Sheppard*.

*L. C. J. Jones.* Were you present at *Sheppard's*, when *Ferguson* was there, and pull'd the Paper out of his Bosom?

*Cornish.* It is as great an Untruth as ever was told in the World: But since he takes this Freedom to Charge me, I desire to know if he be a law-

## The T R Y A L of

ful Evidence? He stands Charg'd to be Guilty of High Treason.

An Accom-  
plice may be  
a Witness be-  
fore Convi-  
ction.

*Att. Gen.* There is no Indictment at all against him.

*Rumsey.* Mr. *Cornish* and I, have had great Concerns together; during the Time I manag'd the Customs at *Bristol*, he return'd between Three and Four Thousand Pound for me. He is a very Honest Gentleman, and I appeal to himself, Whether I take Delight to appear here to Accuse him?

*Cornish.* But, Colonel, What is the Reason that you have not Accus'd me all this while?

*Rumsey.* I think I suffer for it, and not you: You say I Accuse you Falshy; then, Mr. *Cornish*, You don't stand there, nor I here.

Page 596.

*Att. Gen.* Had you never any Discourse with him at other Times?

*Rumsey.* We have had a long Acquaintance, Fourteen Years; but in my Life I never heard him speak any Thing before that, to my knowlege.

*Goodenough* Sworn.

One pardon'd  
who was Out-  
law'd, and al-  
low'd to be a  
Witness.

*Cornish.* He is not a Witness; he stands Indicted upon an Outlawry.

*L. C. J. Jones.* They admit it, but will produce a Pardon.

*J. Withins.* He was your Under-Sheriff.

*Cornish.* Much against my Will; and this is nothing but Malice against me.

*Mr. Goodenough's* Pardon Read.

*Cornish.* I conceive this can't be done, but by Writ of Error, or Act of Parliament.

*J. Withins.* That is no piece of Law, I am sure of it.

*Att. Gen.* What do you know of a Rising intended?

*Goodenough* de-  
poses, that  
talking with  
the Prisoner  
of an Insur-  
rection, and  
Seizing the  
*Tower*, he  
said he would  
do what he  
could.

*Goodenough.* I know nothing of the Business of my Lord *Russel's*; but there was a Design to Rise in *London*: We design'd to divide it into Twenty Parts, and out of each Part to raise Five Hundred Men, to make an Insurrection. They were to take the *Tower*, and drive the Guards out of Town.

*Att. Gen.* Acquaint my Lord, What Discourse you had with Mr. *Cornish*.

*Good-*

*Goodenough.* Before this was agreed on, I chanc'd to be at Alderman *Cornish's*; Sir, said I, now the Law won't defend us, though we be never so Innocent; some other Way must be thought on. Said he, I wonder the City is so unready, and the Country so ready. I said to him again, There is something thought of to be done here: In the first Place, the *Tower* ought to be Seiz'd. Upon this, he made a little Pause, and said, I will do what I can, or what Good I can. Some Time after, he met me on the *Exchange*, and ask'd me how Affairs went? Which I understood to be, relating to what we discours'd of. This was in *Easter Term*, 83; and I never met him afterwards.

*Cornish.* My Lord, he hath been in an Act of Treason since that for which he is pardon'd.

Page 597.

*L. C. J. Jones.* If he be Guilty of Treason, till he is Try'd and Convicted, it doth not take off his Testimony.

*Cornish.* Pray, Mr. *Goodenough*, remember all all your Tricks: Was there any Body present, when this Discourse pass'd between you and I?

*Goodenough.* No; It was in your lower Room, in your own House.

*Cornish.* As to my asking him, How Matters went? that might be in reference to the Suit you were managing for the Rioters; I know of nothing else.

*J. Withins.* I tell you, Mr. *Cornish*, that was a Branch of the same Plot.

*L. C. J. Jones.* But you say, it is strange you should be in a Room alone, when you acknowledge him to have been Attorney, in a Cause of mighty Consequence among you.

*Cornish.* He was Concern'd for all; and I do not believe he ever came to me about that Business.

*Att. Gen.* Will you ask him any more Questions? If not, go on, we have done.

*Cornish.* My Lord, it is a very improbable Thing, that I should meet Col. *Ramsay* at Mr. *Sheppard's*, where I saw such Wicked, Horrible Doings; and that he should never after speak to me of that Affair. He owns we had a great deal of Freedom, that we were Acquainted for Fourteen Years together;

*Cornish's Defence.*

ther; and that I should see him so often afterwards, and never speak of it, is as improbable, as any Thing in the World. The Great God of Heaven and Earth, before whom I stand, knows, that I know nothing of all that he hath sworn against me: He must swear these Things to save his own Life. I am as Innocent as any Man in this Court, if I were to appear before the Great God, in Judgment, this Moment.

*L. C. J. Jones.* I would allow you all the Liberty in the World, to speak pertinently to your Defence; but to oppose Confidence against express Testimony, is the weakest Defence that can be. If you have any Thing to urge, against the Testimony of these Persons, besides the Improbability you have so often mentioned, you shall be heard? If you have any Witnesses you will call, we will hear them likewise.

Page 598.

*Cornish.* Mr. *Rumsey* declared upon his Oath, when he swore against my Lord *Russel*, that he had nothing else to swear against any Man.

*J. Withins.* How does it appear?

*Cornish.* I will produce it, if your Lordship please to give me Time.

*J. Withins.* But afterwards, he discover'd a great deal more.

*Cornish.* I conceive, *Rumsey* not producing a Pardon, his Evidence is not good.

*L. C. J. Jones.* You have had the Opinion of the Court; we must over-rule you.

*Cornish.* I have some Witnesses to call, as to Mr. *Goodenough*. It was my great Misfortune he was admitted into the Office of Under-Sheriff; I desire some few Men may be call'd, that will witness I did oppose him.

*Mr. Gosfright* call'd.

My Lord, after *Bethel* and *Cornish* were chosen Sheriffs, they had some Meetings concerning an Under-Sheriff. *Bethel* nam'd *Goodenough*, and *Cornish* nam'd another: And *Cornish* told *Bethel*, if *Goodenough* were Under-Sheriff, he would Fine, and not hold; for he said, he was a Man he would not trust a Hair of his Head with; that he had no Know-

The Prisoner calls Witnesses to shew there was no Friendship between him and *Goodenough*.



Knowledge of his Business, was Obnoxious to the Government, and an Ill Man.

*L. C. J. Jones.* How did *Goodenough* and *Cornish* agree? Page 599.

*Gosfright.* I believe the Animosities were so great, that they were never reconciled.

Alderman *Love* call'd.

*Love.* I did hear Mr. *Cornish* complain, he was impos'd upon to take this Man: He was much inclin'd to one *Milborn*.

Mr. *Jekyl* call'd.

*Jekyl.* He told me, when he was Sheriff, how he was troubled with *Bethel*, because he would put *Goodenough* upon him; and as I remember, he said he would not have him, because he was Obnoxious to the King and Government.

*Cornish.* If Sir *William Turner* be upon the Bench, I desire he would declare how I was used?

Sir *W. Turner.* I remember Mr. *Cornish* told me, that Mr. *Bethel* press'd very much for *Goodenough* to be Under-Sheriff; that he had no Mind to accept him, and he would propose another; and it caused a great Difference; but it was at last composed. Page 600.

*Cornish.* I shall call some Witnesses to my Life and Conversation.

The Dean of *Canterbury*, Dr. *Tillotson*, (who did not appear.) Witnesses call'd to his Reputation.

*L. C. J. Jones.* Will any Man attest your Loyalty, in *London*.

*Cornish.* The Dean of *Norwich*, Dr. *Sharp*, (who was not there.)

*Cornish.* I desire Mr. *Lane* may be ask'd, What he knows?

*Lane.* Col. *Rumsey* says, in my Lord *Russel's* Tryal, he did not hear the Declaration Read; but it was Read before he came there.

Mr. *North.* Were you present at the Tryal?

*Lane.* No, Sir, it is in the printed Tryal.

*L. C. J. Jones.* It is no Proof at all.

*Cornish.* It is by Authority.

*L. C. J. Jones.* Any Body that was present, may swear it. Printed Tryal not admitted as Proof.

## The T R T E A L of

Dr. Calamy, the Minister of his Parish, call'd.

Dr. Calamy. Mr. Cornish came to Church, with his Family, constantly, and to the Communion once a Month; and I never heard him say a Disrespectful Word of the Government, the two Years I have been Minister.

Mr. Reeve, and Mr. Cook, and Mr. Knap, &c. were call'd, and testified as to his Reputation and Loyalty.

Page 601.

Cornish. I am satisfied, I have appear'd here, with all the Care and Caution that becomes an Honest Man; I have spoke nothing but what I have consider'd, as I have been in Presence of the Great God. I never was at any Meeting, nor ever heard any thing of this, till the Tryal of my Lord Ruffel.

Then the Lord Chief Justice Jones repeated the Evidence, and directed the Jury to find against the Prisoner.

Page 602.

Mrs. Gantt  
Convicted.

Page 603.

The Jury withdrew, and return'd after a considerable time.

Cornish. I must pray your Lordship to consider my tenderness in offending you, which made me omit calling Mr. Sheppard. Pray, my Lord, be pleas'd to remember Mr. Rumsey's Evidence.

A Witness ex-  
amin'd after  
the Jury was  
withdrawn.

Att. Gen. I would acquaint you, my Lord, I sent a Subpœna for Mr. Sheppard, but could not find him; but I understand, that Mr. Cornish's Son was with him Yesterday, and he has absconded: This I will give an Account of upon Oath. This, my Lord, is a dangerous Practice, after Examination, and after the Jury is withdrawn.

Cornish. Pray do not aggravate the Matter?

Att. Gen. I must do my Duty for the King.

Cornish. My Son found him at Church.

Mr. Sheppard appears.

Page 604.

Att. Gen. Is there any Account between you and Mr. Cornish?

Sheppard. Yes, there is, about One Hundred or Two of Pounds, due to him.

Sol. Gen. Did you leave Word whither you went, when you went out Yesterday?

Sheppard. No, Sir.

Sol.

*Sol. Gen.* Which *Subpœna* was serv'd first upon you?

*Sheppard.* Mr. *Cornish's*: It was serv'd on me Yesterday, presently after I came out of Church.

*L. C. J. Jones.* What have you to say?

*Cornish.* Mr. *Rumsey* gave Evidence that Mr. *Sheppard* held the Candle while the Declaration was Read.

*Sheppard.* At one of those Meetings that was at my House, Mr. *Cornish* came into the House, to speak with the Duke of *Monmouth*, or some other, and did not stay half a quarter of an Hour; I came up, and went out with him, and there was not one Word read, and no Paper seen, while he was there. I remember there was a Declaration read, *Ferguson* pull'd it out of his Shoe: But I do positively say, there was no Paper Read to Mr. *Cornish*, for he was not look'd upon to be of the Company. And Mr. *Cornish* was there but once, when the Duke of *Monmouth* was there.

*Sheppard deposes* no Paper was read to the Prisoner, at his House; and that they did not take him to be one of the Company.

*L. C. J. Jones.* There was a Cabal of Rebels met together, and you go and bring up this Man to them, without any Leave from them, which is incredible; unless you knew him to be one of the Company, and equally engaged with him.

Page 609.

*J. Levins.* They came privately, I suppose, that no body should know they were there.

*Sheppard.* I suppose so, Sir.

*J. Levins.* Why then did you carry Mr. *Cornish* up?

*Sheppard.* My Lord, to my knowlege, I can safely say, he knows nothing of it.

And the Prisoner knew nothing of their Design.

*Att. Gen.* Had you Order from that Company, not to bring up any Person? Do you remember you swore so at a former Tryal?

*Sheppard.* They desir'd I would let none of my Servants up, and I fetch'd up Wine, and what they wanted.

*Rumsey.* My Lord, as soon as Mr. *Cornish* had made his Excuse for not coming sooner, all the Company went about him, and somebody did tell him, they would tell him what they had done. They told him, the Declaration had been Read; that Mr. *Ferguson* had prepar'd; and they said,  
Look

*Rumsey depo-  
ses Sheppard  
held the Can-  
dle while the  
Declaration  
was read.*

*Page 606.  
Cornish Con-  
victed.*

*Eliz. Gaunt  
Condemn'd.*

*Page 607.  
Ring, Fernley,  
and Cornish  
Condemn'd.*

*Page 608.*

Look you, Mr. *Cornish*, you shall hear it Read : And with that, this Gentleman, though he denies it, did take the Candle, and held it. They did not come to the Table, but the Company stood round, while Mr. *Ferguson* pull'd it out of his Bosom. My Lord, the Declaration was Read, and Mr. *Cornish* did approve of it, and did say, With that small Interest, or little Interest, or Words to that Effect, that he would Assist.

Mr. *Solicitor* summ'd up the last part of the Evidence : And then the Jury withdrew for a short time, and returning, brought Mr. *Cornish* in Guilty. And found 140 l. for the King, in Mr. *Sheppard's* Hands.

Then *Elizabeth Gaunt* was set to the Bar, and Mr. *Recorder* pronounc'd Sentence upon her.

Clerk. Bring *Henry Cornish* to the Bar : Hold up thy Hand, &c.

Mr. *Cornish* made Protestations of his Innocence, and desired the Court, to interceed with his Majesty for his Life.

Then *William Ring*, and *John Fernley*, were set to the Bar with him ; and Mr. *Recorder* pronounc'd Sentence upon all Three, as Traytors.

*The Tryal of CHARLES BATEMAN, Sur-  
geon: 9 Decemb. 1 Jac. II. 1685.*

*He was Arraign'd and Try'd the same Day, altho' no Notice had been given him of his Tryal; it being said, he had Opportunity enough to take Notice of his Tryal, for that it was upon an Indictment of the preceeding Sessions.*

The Indict-  
ment for High  
Treason, in  
Conspiring  
the Death of  
the King, and  
in order there-  
to, promising  
to assist in  
the seizing his  
Person, &c.

HE was Indicted for High Treason, in Conspiring the Death of the late King *Charles the III* ; and to that End the Indictment sets forth,  
“ That the said *Charles Bateman*, the 30th Day of  
“ *May*, in the 35th Year of the said late King, and  
“ divers other Days and Times, as well before as  
“ after, at the Parish of *St. Dunstan's* in the *West*,  
“ in the Ward of *Farringdon* without ; being As-  
“ sembled, with divers others, false Rebels and  
“ Traytors,



“ Traytors, did promise and undertake, to the  
 “ said other false Rebels and Traytors, then, and  
 “ there present, That he the said *Charles Bateman*,  
 “ would be Assisting and Aiding, in the Taking  
 “ and Apprehending the Person of our said late  
 “ Lord the King; and in Taking and Seizing the  
 “ City of *London*, and the Tower of *London*, the  
 “ *Savoy*, and the Royal Palace of *White-Hall*; a-  
 “ gainst the Duty of his Allegiance, the late King’s  
 “ Peace, &c.

Mr. *Phipps* open’d the Indictment, and Mr. Ser-  
 jeant *Selby*, and Mr. *Charles Molloy*, shew’d the Na-  
 ture and Course of the Evidence. Page 609.

Then Mr. *Josias Keeling* was Sworn.

He gave an Account of the Conspiracy in Gene-  
 ral, and depos’d, that he, the Deponent, had been  
 at several Meetings and Consults about Seizing the  
 King, &c. And particularly with *Rumbald* the  
 Malster, since Executed, for High Treason. And  
 that *Rumbald* produc’d Papers, containing the Mo-  
 del of a Design to divide the City into Twenty  
 Parts, and to raise Five Hundred Men in each Part,  
 to be under one Chief, and nine or ten subordinate  
 Officers: That the Names of the Lanes and Streets  
 of each Division were incerted therein. That *Rum-  
 bald*, at the same time, propos’d the Business of the  
*Rye-House*; saying, He had a House very conveni-  
 ent to plant Men in, to Seize the King in his Re-  
 turn from *New-Market*; but that he was some-  
 thing shock’d at the Thoughts of killing the Postil-  
 lion in cold Blood. He further depos’d, he had  
 been at divers other Meetings of the Conspirators,  
 and that Mr. *Bateman* was look’d upon as a fit Per-  
 son to manage one of the Divisions in the City, in  
 order to an Insurrection, and Seizing the Tow-  
 er, &c.

*Keeling’s Evi-  
 dence of the  
 Rye-House  
 Plot, &c. in  
 general.*

Mr. *Bateman*, the Prisoner, observing that this  
 General Evidence did not affect him; the Court  
 directed the Jury, that they were not to take any  
 other Notice of it, than as a Proof, that there had  
 been a Conspiracy.

*Thomas Lee* was Sworn.

He depos’d, that he was sent by Mr. *Goodenough*,  
 to the Prisoner Mr. *Bateman*, to discourse with  
 him Tower, &c.

That *Bateman*  
 was deem’d a  
 fit Person to  
 manage the  
 Insurrection.

*Lee’s Evidence  
 of the Priso-  
 ner’s being  
 concern’d in  
 the intended  
 Insurrection  
 in the City,  
 Seizing the  
 him Tower, &c.*

him of the intended Division of the City, into Twenty Parts: That he observ'd the Prisoner was no Stranger to the Design; that he Assented to it, and was very desirous to speak with Mr. *Goodenough* about it. That at another time, he went with the Prisoner to the late Duke of *Monmouth's*; and that after the Prisoner had talk'd with one of the Duke's Servant's, he came to the Deponent, and told him, The Duke was willing to ingage in the Business; and that he had several Horfes kept in the Country, to be in a readiness, when Things should come to Extremity. That he went afterwards with the Prisoner to the Tavern, who propos'd the Seizing of the King, the *Tower*, *White-Hall*, the *Savoy*, &c. and said, he would not be wanting therein. That there were other Discourses tending to the Insurrection, but were broke off, by the coming of one *John Allmeger*, before whom, Mr. *Bateman* would not discourse. He farther depos'd, That the Prisoner had told him, he intended to take a House near the *Tower*, to place Men in, in order to surprize it; and that he had several Conferences with Sea Captains, about that Affair.

Then Mr. *Richard Goodenough* was Sworn.

*Goodenough's*  
Evidence of  
the Prisoner's  
promoting the  
intended In-  
surrection.

He depos'd, that being in Company with Mr. *Bateman* the Prisoner, at the Tavern (he thought it was the King's Head Tavern in St. *Swithin's* Alley, near the *Royal Exchange*,) and with Mr. *Wade*, and some others, who promoted the said intended Insurrection. Mr. *Bateman*, the Prisoner did not only approve of the Design, but promised to use his Interest in Raising Men; and said, he would not only be assisting in the Division allotted him, but in surprizing the *Savoy*, and driving the Guards out of Town.

*Bateman's* De-  
fence.

Mr. *Bateman*, in his Defence, urg'd the improbability of his ingaging in such a Desperate Design; and said, if the Witnesses swore true, he deserv'd to be sent to *Bedlam*. And that he wonder'd he had not been prosecuted sooner; the Words being alledg'd to be spoken so long since.

To which the King's Council Reply'd, That *Goodenough* was not to be had till after the Rebellion in the *West*; and *Keeling's* single Testimony,

was not sufficient to Convict him, in a Crime of this Nature.

The Prisoner call'd several Witnesses to invalidate *Lee's* Testimony, and one of them, *Baker*, not appearing till the Chief Justice had summ'd up the Evidence, the King's Council oppos'd his giving Evidence; but the Jury desiring to hear him, he was examin'd. He depos'd, that *Lee* desir'd him to insinuate himself into the Prisoner's Company, and talk with him of State Affairs, in order to intrap him. But his Evidence did not carry much Weight, the Man being a poor broken Shoemaker, and thought to be hired for this purpose.

Then the Jury withdrew, and in half an Hour return'd, and brought the Prisoner in Guilty.

On *Friday* the 11th of *December*, being call'd to his Sentence, he desir'd to know, If Mr. *Goodenough* were fully pardon'd? And was told, that as to the Outlawry he was pardon'd, and the Pardon had been allow'd in the Court of *King's Bench*; and for any thing else, he was not prosecuted.

Then Sentence was pronounc'd upon the Prisoner, as a Traytor, and he was Executed at *Tyburn*, the 18th of *December* following.

Page 610.

A Witness admitted to be Examined, after the Evidence summ'd up.

Prisoner Convicted.

Person Outlaw'd for Treason, and pardon'd, a good Witness.

Sentence pass'd.

Prisoner Executed.

*The following Remarks of Sir John Hawles's, being Bound up with the State Tryals at large, I am under a Necessity of mentioning them; but since they either contain such Maxims and Assertions, as are not, or ever were held to be Law; or such Observations as may be frequently met with in these Tryals, and are stuff'd with virulent Invectives on all the Courts of Justice, King's Council, and Witnesses, for the greatest part of the Reigns of King Charles the II<sup>d</sup>, and King James the II<sup>d</sup>; It is thought abundantly sufficient, in a Work of this Nature, to give the Reader the Principal Heads of them; and had they not been mentioned in the Tryals at large, it is the Opinion of the Learned, they had been much better totally omitted; as tending rather to lead the Reader into Mistakes, than to inform his Judgment.*

Remarks

Page 611. *REMARKS on Fitzharris's Tryal,*  
by Sir JOHN HAWLES.

Page 612. **T**HE Remarker affirms, That one who is under a General *Impeachment* for High Treason, cannot be Try'd on an *Indictment* for the same Treason.

Page 614. That whenever the Courts at *Westminster*. think a Matter to be of such Difficulty, as it is fit to be Argued; they ought not to give Judgment in it, without giving their Reasons.

Page 615. That a Juror's want of Freehold, was a good Cause of Challenge in High Treason.

*Ibid.* That where the Council for the King Challenge a Juror, without shewing Cause, the Prisoner may Challenge the rest of the Pannel.

Page 619. That the Parliament may, and it is no Injustice in them, to make and declare a Crime to be High Treason, after it is committed, though there were no Law which made it High Treason, at the Time it was committed.

*Remarks on Colledge's Tryal.*

*Ibid.* That to permit the King's Council to have Access to the Grand Jury, in Order to induce them to find a Bill of Indictment, is unjustifiable.

Page 621. That it is a Prisoner's Right to have Council, and a Solicitor, to Advise him in his Defence, before the Tryal. And he seems to insinuate, he has a Right to their Assistance, even at the Tryal.

*Ibid.* He insinuates, the seizing a Prisoner's Papers, is Illegal.

Page 624. He affirms it to be Illegal to take up a Man for High Treason by a Messenger, without an Indictment precedent.

*Ibid.* and Page 628. That it is a Hardship upon the Prisoner, that he must hear all the Witnesses produc'd against him together, without answering each as he comes.

*Ibid.* That neither the Common, or Statue Law, warrant the abovesaid Practices.

Then



Then he makes a Repetition of the Evidence, and Proceedings in *Colledge's Tryal*; and censures the Court, King's Council, Jury, and Witnesses, as so many Villains.

Page 625.  
to  
Page 629.

*Remarks on the Earl of Shaftsbury's  
Grand Jury.*

He lays it down, That the Reason of instituting Grand Juries, was, That no one, for a Capital Matter, should ever be *question'd by the King*; unless they take it upon their Oaths, that they believe the Matter of the Accusation to be true. And that it is not, as the Chief Justice said in that Case, That the Grand Jury were only to Consider, Whether there were a probable Ground for the King, to call the Person Accused, to an Account?

Page 630.

*Remarks on Mr. Wilmer's Homine  
Replegiando.*

The Court, it seems, upon an *Homine Replegiando* awarded against *Wilmer*, for sending a Boy beyond Sea, told the Sheriffs, They must either Return, that they had Replivied the Boy (and then they must have him in Court, or be laid by the Heels.) Or they must Return, that *Wilmer* had Esloigned him, that is, Convey'd, the Boy, where the Sheriff could not find him: And then a *Withernam* would issue against *Wilmer*, upon which he would be committed to Prison, till he produc'd the Boy.

Page 632.

But the Remarker denies this to be Law, and says, The Sheriffs were at Liberty to have made another Return; *viz.* The Special Matter, That he had sent the Boy (being his Servant) to Sea, by his own Consent, or by Virtue of Covenants between them. Or they might have Return'd he was Dead, if that had been the Case; for this is allow'd to be a good Return in a Replevin for Cattle.

Page 633.

Here the Remarker inveighs against the Proceedings on the *Quo Warranto* against the City; and he calls my Lord *Russel's* a pretended Plot.

*Ibid.*

*Remarks*

*Remarks on my Lord Ruffel's Tryal.*

Page 635. The Remarker opposes his single Judgment to that of all the Judges on the Bench, at my Lord Ruffel's Tryal; and says, The want of Freehold is a sufficient Cause of Challenge.

*Ibid.* That it is totally in the Discretion of the Judges to put off a Tryal, and they need not the Consent of the Attorney General.

Page 637. He insinuates, That it is Illegal to deny the Prisoner a Copy of the Pannel; and that the Prisoner ought to have Notice of the Facts design'd to be insisted on at his Tryal.

Page 638. Here he repeats the Substance of the Evidence, given for and against the Lord Ruffel, and makes his Reflections upon it. And inveighs against the Court, to  
Page 640. and the King's Council, and Witnesses.  
Page 642.

*Remarks on Colonel Sidney's Tryal.*

Page 643. He complains, That the Prisoner was brought to *Westminster* to be Arraign'd, before the Indictment was found; but says, the King's Council had pack'd a Jury, who they knew would find the Bill upon sight.

He insinuates, That *West* was not a Legal Witness, because he was not pardon'd. When he himself very well knew, he was a good Witness, for he had never been Indicted.

That it was not allowable to give Evidence of the Plot in general.

*Ibid.* He repeats part of the Evidence given, but often misrepresents it.

Page 644. That the Indictment against Col. Sidney was defective, because it did not say he *Publisch'd* the Treasonable Libel laid in the Indictment. And says, That this was the first Indictment of High Treason, upon which any Man lost his Life for *Writing*, without *Publishing* it. He quotes *Cro. Car. 89.*

That similitude of Hands, is no Proof in a Criminal Matter.

That

That the Book could not be Treason, it not appearing with what Intent it was wrote, nor at what Time.

That the whole Writing ought to have been read. N. B. *The Court deny the Reading any Part of it, which the Prisoner should desire.*

He inveighs against the Judge who summ'd up the Evidence. Page 645.

Denies the Case resolv'd by all the Judges of England to be Law, viz. That if one Witness prove J. S. bought a Knife with a Design to Kill the King, and another Witness also prove the Buying the Knife, though he knew not with what Design; they are two Witnesses of an Overt-Act within the Statute of *Edw. VI.*

He insinuates, that *Holloway* was inveigled by Promises of Pardon to confess what he was not Guilty of, and afterwards executed, because he would not accuse those that were Innocent.

*Remarks upon the Award of Execution against Sir Thomas Armstrong,*

*Ibid.*

That at Common Law, if a Person beyond Sea were Outlaw'd, it was an Error in Fact, for which the Outlawry was to be Revers'd. That by the 6th of *Edw. VI.* if he surrender himself within a Year to the Chief Justice, and offer to traverse his Indictment, and is acquitted, he shall be discharg'd of the Outlawry.

He affirms, That no Man Outlaw'd was ever deny'd a Tryal till this Time: And that altho' *Armstrong* did not surrender himself but was taken, he ought to have had a Tryal, as well as if he had surrendred himself, according to the Statute.

And, in short, That the Proceedings against *Armstrong* was unjustifiable. Page 646.

*Remarks on the Tryal of Count Conningsmark.*

He says, There was no Necessity of Trying the Count, who was Accessary at the same Time with

the Principals, altho' they were all in the same Indictment; for altho' the Indictment be against many jointly, the Tryals may be several.

*Nota.*  
Page 647.

That the Examinations of the Principals before the Justice, ought to have been read against the Count, tho' they were all in one Indictment: And that *Stern* and *Borosky*, tho' Indicted with him, might have been good Witnesses against him.

He reflects on the Court for bringing off the Count, and hanging his Agents, who were less Guilty.

### *Remarks on Mr. Cornish's Tryal.*

*Ibid.*

The Remarker complains Mr. *Cornish* was not allow'd a reasonable Time to prepare for the Tryal, and gives a partial Abstract of the Evidence.

Page 648.

Objects to the Credit of the Witnesses, that they had acknowledg'd themselves Guilty of a treasonable and barbarous Design.

Complains of the Injustice of denying the Prisoner Council: And that altho' the Judges knew *Rumsey* contradicted the Evidence he gave at my Lord *Russel's* Tryal, they would take no Notice of it: And says, they ought to have been Witnesses for him.

Page 649.

Affirms that Mr. *Sheppard* was as well qualified to be a Judge, as any Judge upon the Bench.

Page 650.

He insinuates, that a Design to seize upon the Guards, or seize upon the Tower, was not Treason, by 25 *Edw. III.*

That it was an Indignity not us'd to Persons of his Quality, to order him to be tied up after he had receiv'd Sentence.

Page 651.

He condemns the Judges in general, as cruel, barbarous and unjust; the same he insinuates of the King's Council throughout his Remarks, and says the Jury were pack'd, and both them and the Witnesses perjur'd, in most of the Tryals he mentions, which are great Instances of the Man's Modesty.

*Remarks*



*Remarks on the Tryal of Charles Bateman,*

The Remarker says, the Reason of Trying him for High Treason, was because he had been Surgeon to my Lord *Shaftsbury*, and had attended *Oates* at his *Whipping*.

He insinuates, that the Accomplices in a Crime are not legal Witnesses, till they are pardon'd.

He says, the Prisoner was a Mad-man, and inveighs against the Court for Trying him.

The Remarker at length thinks, he stands in need of an Apology for Reflecting on the Courts of Justice for so many Years, but seems to look upon himself qualified to do it, having been educated, as he says, in one of the Three Great Schools, afterwards at the University, and been Twenty Five Years at the Inns of Court; but the rest of the World will be apt to think such an Education ought to have furnish'd him as well with more Modesty, as more Law, than appears in his Remarks.

And the Remarker himself had the Effrontery, as he calls it, to appear as Prosecutor (being then Solicitor-General) at the Tryals of those who were charg'd with a Conspiracy against King *William*, where most, if not all, he had'advanc'd for Law in his precious Remarks, was over-ruled and confuted, particularly in the Tryals of Mr. *Charnock*, and Sir *John Friend*: And the Lord Chief Justice *Holt* made this Remark at some of the last mention'd Tryals, *That he knew no other Authority for those Opinions, than their being to be found in some such Trifling Pamphlets as the Remarker's: See Rookwood's Tryal.*

Page 653.

*The Tryal of JOHN HAMBDEN, Gent.*  
30 Decemb. 1 Jac. II. 1685.

THE Prisoner was Indicted for High Treason, in Conspiring the Death of the late King *Charles* the Second, and endeavouring the Subversion of the Government Establish'd; and to that End the Indictment sets forth, " That the Pri-

F f 2

The Indictment for High Treason in conspiring the Death of King *Charles* II. and to that end meeting and conspiring to raise a Rebellion against him.

" soner

Page 654.

“soner, the 20th Day of July, in the Thirty  
 “Fifth Year of the said late King, and divers o-  
 “ther Days and Times, as well before as after,  
 “at the Parish of St. Giles’s in the Fields, in the  
 “County of *Middlesex*, did Traiterously meet  
 “and consult with *James* late Duke of *Monmouth*,  
 “and divers other false Traytors, to the Jurors  
 “unknown, how to procure great Sums of Mo-  
 “ney, and great Numbers of Armed Men, to  
 “Levy War and Rebellion against our said late  
 “Sovereign within this Kingdom of *England*, a-  
 “gainst the Duty of his Allegiance, the King’s  
 “Peace, &c.

Page 655.  
 Prisoner ob-  
 jects he had  
 been try’d  
 before, and  
 fin’d for the  
 same Fact.

Mr. *Hambden* objected, That he had been Try’d  
 and Convicted for the same Fact Two Years be-  
 fore, and was now in Execution for his Fine: But  
 that he pass’d by all Pleas whatever, and cast him-  
 self wholly upon the King’s Mercy.

Pleads Guilty.

The Chief Justice answer’d, He had never be-  
 fore been Try’d for High Treason; and that he  
 must either plead *Guilty* or *Not-Guilty*.

Throws him-  
 self on the  
 King’s Mercy.

Then he pleaded *Guilty*, acknowledg’d he had  
 highly Offended, and implor’d the Chief Justice  
 to Intercede for him.

The Chief Justice observ’d to him, he had  
 pleaded the best Plea to find Mercy; but how far  
 the pleading *Guilty*, when there was full Evidence  
 to prove him so, might move his Majesty’s Com-  
 passion, he did not know, and then he order’d  
 the Plea to be Recorded.

Mr. *Hambden* took Notice, there were Words  
 in the Indictment concerning the Death of the  
 King: What Construction the Law might make,  
 he was ignorant of; but for any direct Intention  
 of taking away the Life of the King, no Man did  
 abhor it more than himself.

Page 656.  
 The Court  
 would not ad-  
 mit his  
 Friends to be  
 in private  
 with him.

He desir’d he might have his Friends come to  
 him, without the Presence of the Keeper; but was  
 told the Court could not grant it, he must apply  
 himself to the King.

Sentence pro-  
 nounc’d.

Being ask’d what he could say, why Sentence of  
 Death should not be pass’d upon him? he said, He  
 rely’d on the King’s Mercy; and the Recorder  
 pronounc’d the usual Sentence, as in Cases of High  
 Treason.

The

*The Tryal of HENRY Lord DELAMERE,* Page 656.  
I Jac. II. 1685.

**A**FTER the Peers summon'd to the Tryal were call'd over, and had answer'd to their Names, the Ld. H. Steward made a short Speech to the Prisoner, importing, " That a Bill of Indictment for High Treason had been found against him by the Grand Jury of the County Palatine of *Chester*, the usual Place of his Residence: " That he need not doubt a fair Tryal before those his Peers; but however, if he was conscious he was Guilty, he would do well to give Glory to God, and make Amends to his Vicegerent the King, by a plain and full Discovery; and not, by an obstinate persisting in his Denial, provoke the just Indignation of his Prince.

Page 657.

Then the Clerk of Arraignment calling to him to hold up his Hand, the Prisoner said, In my Lord *Stafford's* Case it was allow'd to be the Privilege of the Peers not to hold up their Hands. The Lord High Steward said, This being a Matter of Privilege, was not for him to determine; but that in Law, it was not material whether he did or not, if they were satisfied it was the same Person that was Indicted.

Page 658.

A Peer need not hold up his Hand when he is arraign'd.

Lord *Delamere*. Must I address my self to your Grace, when I would speak or to your Grace with the rest of these Noble Lords my Peers.

Lord High Steward. You must direct what you have to say to me, my Lord.

Lord *Delamere*. Is your Grace one of my Judges in Concurrence with the rest of the Lords?

L. H. S. No, I am Judge of the Court, but I am none of your Tryers.

The Indictment sets forth, " That the said Ld. *Delamere*, as a false Traytor against our Sovereign Lord the King that now is, the 14th of *April*, in the First Year of his Reign, at *Mere*, in the County of *Chester*, did maliciously conspire the Death and Deposing of the said King; and to that end, the Day and Year aforesaid,

Lord High Steward has no Vote at a Tryal out of Parliament.

The Indictment for High Treason in conspiring the Death of the King, and consulting with other Traytors to raise a Rebellion for that Purpose.

“ did Traiterously assemble, consult and agree with  
 “ *Charles Gerrard*, Esq; and other false Traytors,  
 “ to raise great Sums of Money, and procure Num-  
 “ bers of Armed Men to make a Rebellion against  
 “ the King and the City and Castle of *Chester*, to  
 “ seize with the Magazines there; and that after-  
 “ wards, viz. the 27th of *May*, in the Year above-  
 “ said, he took a Journey from *London* to *Mere*  
 “ aforesaid, to accomplish his said Treasonable  
 “ Intentions; and that upon the 4th Day of *June*,  
 “ in the said Year, at *Mere* aforesaid, in further  
 “ Prosecution of his said Traiterous Purposes, he  
 “ did invite divers Subjects of our said Lord the  
 “ King to join with him, and the said other false  
 “ Traytors, contrary to the Duty of his Allegi-  
 “ ance, the King's Peace, &c.

Page 659. At the Prisoner's Desire the Indictment was twice read.

*Lord Delamere*. May it please your Grace, I humbly beg the Favour to be heard a few Words, before I plead to this Indictment.

*L. H. S.* My Lord, You must either plead or demur to the Indictment, before any thing else can be done.

*Lord Delamere*. My Lord, I have a Plea to offer, in reference to the Privilege and Right of the Peers of *England*, Will your Grace be pleas'd to accept it as I have done it? It may be it is not so formal because I have had no Council allow'd me to peruse and sign it.

*L. H. S.* My Lord, If you have any Plea, put it in.

Plea to the Jurisdiction of the Court, for that he ought to be try'd by the whole Body of the Peers in Parliament. And for that the House of Lords were already possess'd of the Cause.

The Substance of his Plea was;

1. That he ought to be try'd by the whole Body of the Peers in Parliament, because the Parliament was still continuing, being under a Prorogation and not dissolv'd.

2. Because the House of Lords were already possess'd of the Cause, it having been agitated there the last Sessions.

For these Reasons he conceiv'd he ought not to be try'd upon this Commission before the Lord High Steward and these Noble Lords, but by all the Lords in Parliament.

*L. H. S.*



L. H. S. What say you to it, Mr. Attorney? Page 660.

Att. Gen. My Lord, with Submission; this is contrary to all ancient Precedents, and against the known Rules of Law. For the Law is, if the King pleases to Try a Peer in Parliament, then the Record may be brought into the House, and there they proceed as in other Cases, and all the Peers are Judges. Thus it is in the Time of a Session of Parliament; but if the Parliament be prorogued, then the Proceedings are before the Lord High Steward by Commission. And as to the House of Lords being possess'd of the Cause; there is nothing at all depending there, that can Oust this Court of the Jurisdiction: For there was not so much as any Indictment return'd there, or so much as found, during the Session of Parliament. All the Agitation, was only upon my Lord's Petition; and the King's Answer, that he intended as speedy a Prosecution as could be. Besides, your Grace sees it is a Plea in Paper, and in *English*, without any Council's Hand; and your Grace does not expect, I should formally demur to a Plea in this Form, and that contains no more of Substance in it. But I must desire your Grace to over-rule it, and that the Prisoner may plead in Chief.

Lord Delamere. It was agreed in the Case of my Lord Bristol, that the Cause of a Peer, in the time of Parliament, properly belonged only to the House of Lords; and that which possess'd the Lords of it in his Case, was no more than is in my Case, viz. A Petition upon Account of his being Absent; and there the Lords claim the Cognizans of the whole Cause, and nothing was done but in the House of Lords. As for the Instances of my Lord Cornwallis, and my Lord Merley, who were Try'd during a Prorogation, by Commission; the Question never came under Debate in those Cases, and therefore they cannot be admitted as Precedents.

L. H. S. But, my Lord, it would have been an Error in the whole Proceedings, if the Court had not Jurisdiction. And surely, the Judges who always assist in such Cases, would not have let Things pass in that manner, if they had been Erroneous, And I only put you in Mind of these that were lately

King's Council reply, that during a Prorogation, the Proceedings are before the Lord High Steward by Commission.

And that the House of Lords were not possess'd of the Cause.

And that his Plea was in Paper, in *English*, and without Council's Hand, and therefore not necessary formally to demur to it.

Page 661.

Page 662.

lately within Memory. But, no question, there are a great many other Instances to be given.

*The Prisoner* Lord *Delamere*. I hope your Grace will be pleased to Assign me Council to put my Plea in Form; and that I may have Time for it?

*L. H. S.* My Lord, if you insist upon it, and think it worth the while to have Council heard, we will hear them.

*Att. Gen.* If your Grace will hear Council, I must pray (for the King) that it may be done presently. For a Plea to the Jurisdiction, is never favour'd: Nor is the Party to be allow'd Time to maintain it; but he must be ready at the Time it is offer'd.

*Lord Delamere*. *Fitzharris's* Plea was to the Jurisdiction, and he had four Days allow'd him, to put his Plea into Form, and instruct Council.

*Att. Gen.* There was a formal Plea put in Writing, and drawn up in Latin, and a formal Demurrer join'd; and thereupon I did take Time to speak to it. But with your Grace's Favour, by Law, the Prisoner must be always ready to make good his Plea, if he will Oust the Court of their Jurisdiction.

*Lord Delamere*. It is my Duty to submit to what your Grace, and my Noble Lords shall determine: And I hope your Grace will be pleased to advise with my Lords the Peers, here present, it being upon a Point of Priviledge.

*L. H. S.* Good, my Lord, I hope you that are a Prisoner at the Bar, are not to give me Direction who I shall Advise with; or how I shall demean my self: I must acquaint you, that according to the Constitution of this Court, Matters of Law are determin'd by me, as the sole Judge, while I have the Honour to act under this Commission. My Lord, you must pardon me, I can enter no further into Interlocutions with your Lordship. If your Lordship have a Mind to have Council heard, and your Council be ready, we will hear them.

*Lord Delamere*. If your Grace require me to produce Council presently, and they to argue it

A Plea to the Jurisdiction, the Party ought to be ready to maintain it presently.

Lord High Steward the sole Judge of this Court, and need not advise with the Lords.

immediately, I must acquaint your Grace, I cannot do it, for I have none here.

L. H. S. My Lord, I cannot tell how to help it, The Plea is over-ruled.  
the Plea must then be Over-ruled and Rejected.

Then he was Arraign'd, and pleaded *Not Guilty*. He pleads Not Guilty.

My Lord High Steward, in his Charge to the Peers, put them in Mind of the Attempts that had been made in the last Parliament of King *Charles* the 1<sup>st</sup>, to alter the Succession of the Crown, by some froward phanatical Members of the House of Commons. That being defeated in that Attempt, they afterwards consulted how to bring it about by open Force; but it had pleased God to frustrate their Designs. That what Share the Lord at the Bar had in them, was not within the Compass of this Indictment; but the Treason Alledg'd, and for which he was now to be Try'd, was committed in the Reign of his present Majesty. And that as his Lordship at the Bar, might, with great Security rely upon their Lordship's Candour and Readiness to acquit him, if he were Innocent; so the King had that Confidence in their Fidelity and Affections to him, that they would not, by Reason of the Prisoner's Quality, and Nearness to them, as being a Peer of this Realm, Acquit him if he should appear to be *Guilty*.

Lord High Steward's Speech.

Page 663.

That if their Lordships had any Questions to propound, either as to Points of Law, or Fact, they were to propound their Questions to him, according to the usual Course of Proceedings.

All Questions to be propounded to the Lord High Steward. The Prisoner is allow'd one to write for him.

My Lord *Delamere* desir'd he might have one to Write for him. (*Which was granted.*)

Then the King's Serjeant, Sir *Thomas Jenner*, Recorder of the City of *London*, open'd the Indictment, and Mr. *Attorney* shew'd the Nature and Course of their Evidence; and he began with an Account of the former Plot, wherein my Lord *Shaftsbury* and *Russel* were concern'd, which was previous to the Matter for which my Lord *Delamere* stood Indicted. And this was done, in order to shew, that *Cheshire*, where my Lord *Delamere's* Interest lay, and where he chiefly Resided, was one of the Stages where that Rebellion was to have been Acted, if it had taken Effect.

Then

Page 665.  
Lord Howard's  
Evidence of  
my Lord  
Shaftsbury's  
Plot.

Page 666.

Then my Lord *Howard of Eſcrick* was Sworn.  
My Lord *Howard* deposed, That in the Year when Mr. *Shute* and Mr. *Pilkington* were Sheriffs, the Contest about the Election of Sheriffs had occasion'd great Heats in the City, beyond the common Expressions of Discontent; but he knew nothing of any particular Design there was in Hand, till about Six Weeks after the Day of Election; when Captain *Walcott* came to him, and acquainted him, that some Persons were engaged in a Considerable Action, that was near its Execution; and that he had Notice given him to make Preparation. That the Deponent, however, went into the Country, and did not come to Town till *Michaelmas* Day, when the Lord Mayor is Elected, and the Sheriffs Confirm'd; when he observ'd great Murmurings, and very warm Speeches, but did not find there was any intention of entering upon Action, and he thought the Business had been over. But upon the *Monday* Morning after, Capt. *Walcott* came to the Deponent, and told him, my Lord *Shaftsbury* had withdrawn himself, and he believ'd Things were in a great readiness for Action; and that I must go to my Lord *Shaftsbury*, who would give me an Account of the whole. That the Deponent went with Capt. *Walcott* to my Ld. *Shaftsbury*, who then Lodg'd about *Foster-Lane*, near *Woodstreet*, at the House of one *Watson*. That my Lord *Shaftsbury* discoursed of the Badness of the Times, and the Danger all Honest Men were in, now the Court had got Sheriffs Elected to their Minds. And that now, every Man must be run down, for Crimes he was not Guilty of, if the Finger of the Court did but point him out to Destruction. That the Sense of these Things, made him withdraw himself; and, he thought, the Deponent, and others, were not safe: And that he was resolv'd to use his Endeavours to prevent these Calamities. That in order to it, there were Eight or Ten Thousand Men they were assured of in the City; and about One Hundred Horse had come to Town, within a Fortnight before, by small Parties. That these were ready to enter upon Action, but through the unhandsome Disappointment of the Duke of *Monmouth*,



mouth, and the other Lords that adher'd to him, who were to have join'd in the Action, and have set the Wheels at Work in other Parts, he was left alone to do the whole in his Province of *London*, they being not ready to concur according to their Engagements. But as he should have the greater Danger, so he should have the greater Glory; and he resolv'd to go through with the Attempt, or perish in the Execution. That this Discourse was on *Tuesday* the 2d of *October*. That on *Wednesday* Morning, the Deponent waited on the Duke of *Monmouth*, to acquaint him with what my Lord *Shaftsbury* said; and the Duke reply'd, That as to the forsaking my Lord *Shaftsbury*, and the breach of Promise he mention'd, he was mistaken. 'Twas true, they were about doing the Thing he was so eager for, but were not for doing it so hastily, as his Fears precipitated him to do; and he must excuse them, if they did not comply with his Humour, to hazard the whole Undertaking, by a rash Beginning. That the Deponent proposed a Meeting between the Duke and my Lord *Shaftsbury*, that they might come to a right Understanding; which the Duke was ready to comply with. But when the Deponent told my Lord *Shaftsbury* what the Duke said, he answer'd, It was false, they had positively engaged to be ready at such a Time, and had appointed the very Day; but now they were off, and would not tell when they would be ready: And that he greatly suspected the Duke of *Monmouth* to have a secret Correspondence with the King. However, the Deponent prevail'd with the Lord *Shaftsbury*, to give the Duke, and the other Lords, a Meeting; and that he should put off the Rising for a Fortnight. That my *Ld. Shaftsbury* did not, however, meet them; but he remov'd his Lodgings, and the Deponent never saw him after. But that Capt. *Walcott* told him, there had been several Meetings appointed, but from Time to Time put off. That they continued in Expectation of a Rising, till my Lord *Shaftsbury* went to *Holland*, where he shortly after died; and then the Deponent thought the Design had been wholly laid aside. But, that soon after, *Ferguson* came

came over, and acquainted the Deponent, with the Preparations that were made in the City: Of there Plot to seize the Gates, to possess themselves of the Tower, and attack the Guards; and several other Particulars which he had forgotten. That this was all the Deponent could say, previous to the particular Ingagement he was concern'd in, when they form'd themselves into a *Juncto*; which he suppos'd Foreign to the Affair before their Lordships.

My Lord Grey was Sworn.

Page 668.

Lord Grey's  
Evidence of  
Shaftsbury's  
Plot.

*Att. Gen.* My Lord, What do you know of any Design of a Rising in *Cheshire*?

Lord Grey. About the time when the Election of Sheriffs was so much contested in the City of *London*, the Duke of *Monmouth* and my Lord *Shaftsbury* began to discourse about making use of that, as an Opportunity to accomplish their Design; for they thought the Ferment was so high, that Men would easily be disposed to an Insurrection: And they proposed to procure a Rising in three parts of the Kingdom at once. One in *Cheshire*, where the Duke of *Monmouth* was to be; and there he was to be advis'd by my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere* that then was, and the Prisoner at the Bar, what Gentlemen were proper to apply to for joining in the Design. The second was in *London*, which was the Province assign'd my Lord *Shaftsbury*. And the third, in the *West*, which was committed to the Care of my Lord *Russel*. The Duke of *Monmouth* did accordingly go his Progress into *Cheshire*; and on his Return, was taken into Custody of the Serjeant at Arms. Upon which, Sir *Thomas Armstrong* was sent Post to Town, to get an *Habeas Corpus*, and to deliver a Message to me, to be communicated with my Lord *Russel* and my Lord *Shaftsbury*, which was to this Effect: " That he had been  
" kindly reciev'd by the Gentlemen of the Coun-  
" ty, and had discours'd the Matter with them;  
" and found them all inclin'd, very much, to his  
" Satisfaction. That upon his being Arrested, he  
" had been advis'd to make his Escape into *Cheshire*, and Rise immediately; but that he would  
" not

Duke of Mon-  
mouth's Pro-  
gress into  
*Cheshire*.

" not do a Matter of that great Importance, with-  
 " out the Approbation of his Friends.

Soon after the late King's Death, the Duke of *Monmouth* was at *Amsterdam* with my Lord *Argyle*; and understanding an Insurrection was design'd in *Scotland*, he sent Capt. *Matthews* into *England*, with a Message to Major *Wildman*, desiring him to procure a Meeting with my Lord *Macclesfield*, my Lord *Brandon*, my Lord *Delamere*, and Mr. *Charlton*; and acquaint them, that he had receiv'd a full Account of my Lord *Argyle's* Affairs, and the Preparations that had been made for it; and accordingly he had order'd his own Affairs to join with him. He likewise sent *Crag* with a Message to the same purpose, to other Friends in *London*; and he dispatch'd one *Battescorn* into the *West*, to prepare Things there. When *Crag* return'd back again to the Duke, he gave him an Account, that Major *Wildman* had procur'd a Meeting with those Lords and Gentlemen that I mention'd before, who were all of Opinion, that the Duke should go for *Scotland*. There was likewise a particular Message from Major *Wildman* to the Duke of *Monmouth*, that he desired he would bring over with him a broad Seal, to Seal Commissions with, and to take upon him the Title of King. The other particular Branches of the Message, I do not so well remember; but only this, he was particularly ask'd, If the Prisoner at the Bar was there? and he said, he was.

Lord Grey's  
Evidence of  
*Monmouth's* Re-  
bellion, and  
his Depen-  
dence upon  
the Prisoner's  
Assistance.

*Jones* came some time after *Crag*, and gave an Account of other Things, conformable to what *Crag* had said; and was sent back again to *England*, by the Duke of *Monmouth*, to give an Account of his being ready to Sail. By all Discourses with the Duke, he depended very much upon *Cheshire*, and was resolv'd to have Landed and begun there; but he consider'd, the Persons to be apply'd to there, were Men of great Quality and Interest in their Country, and able to manage Things without his Assistance. But in the *West*, the Friends he rely'd on, were not of that considerable Quality, and therefore he chose to Land there.

Mr. Wade

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Wade's Evid-  
ence of the  
Duke of Mon-  
mouth's send-  
ing to my  
Lord Delamere  
for Assistance.

Mr. Wade was Sworn.

He depos'd, that the Duke of *Monmouth* sent over Capt. *Matthews* to his Friends in *Cheshire*, and amongst them, my Lord *Delamere* was named to be one; and the Business was, to desire them to be ready to Assist him, when he should Land. That when the Duke Sail'd from *Holland*, and Landed at *Lyme*, he order'd his March so, that he might most conveniently meet with his *Cheshire* Friends, that was towards *Gloucester*, and so to get *Gloucester* Bridge; that thereby gaining the Command of the River *Severn*, those of *Cheshire*, if they did as was expected, make an Insurrection at the same time, they might easily join together. That *Jones* coming over to *Holland*, to know why the Duke staid so long, for that his Friends in *England* expected him long before; he was dispatch'd to *England* again, to acquaint Major *Wildman*, my Lord *Macclesfield*, my Lord *Delamere*, and my Lord *Brandon*, that he was a coming; and expected they should raise what Forces they could, to assist him.

Mr. Richard Goodenough Sworn.

Goodenough de-  
poses, the  
Duke sent  
*Jones* to my  
Lord *Delamere*, to be  
ready against  
his Landing.

He depos'd, that *Jones* was sent by the Duke of *Monmouth*, from *Holland*, to give the Lord *Delamere* Notice, to be ready against the time he should Land; and take Care to secure himself, that he was not seiz'd in *London*. And that he heard the Duke say, he hop'd my Lord *Delamere* would not break his Promise with him.

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*Jones's* Ac-  
count of his  
being dis-  
patch'd by  
the Duke, to  
his Friends in  
*England*, to tell  
them where  
he should  
Land, and  
where the ge-  
neral Rendez-  
vous should  
be.

*Jones* was Sworn.

He depos'd, that when he came from *Holland*, the Duke of *Monmouth* order'd him, as soon as he came to *London*, to see for Capt. *Matthews*, Sir *Thomas Armstrong's* Son-in-Law, and desire him to acquaint my Lord *Macclesfield*, my Lord *Brandon*, and my Lord *Delamere*, with his Design of coming for *England*; and that he was resolv'd to set out on the *Saturday* Morning after the Deponent came away, which was on *Friday*. That the Duke gave him a Paper of Instructions, Seal'd up, which he was not to open, till he came to Sea; and told him, that Capt. *Matthews* was to send one Post to that Place nam'd in the Instructions, to receive Intelligence of his Landing; that the abovesaid Lords might



might have Notice of it before the Court, and repair to their respective Posts. He directed him, that when he had read the Paper of Instructions, he should tear it, and throw it into the Sea, that he might not be surpris'd with it about him at his Landing. That the Duke directed him, that if *Matthews* was out of the Way, the Deponent should apply himself to *Wildman*; but that he should, by no means, deliver the Message to the Lords himself; for they were Persons of Quality, and that was not proper for him to do.

That the Deponent came from *Holland*, the 22<sup>d</sup> of *May*; and when he was out at Sea, he broke open the Paper, wherein was Written to this Effect, as near as he could remember. *Taunton in Somersetshire, is the Place to which all are to resort; the Persons to be acquainted with the Time of Landing, are the Lord Macclesfield, the Lord Brandon, and the Lord Delamere: The Place to send the Coach to, is to Taunton, to Mr. Savage's House, at the Red-Lion. The Place where the Post was appointed to return, was Capt. Matthews's Lodging, at Mr. Blake's; and he was to recieve the Message, or if he did not, he was to appoint one that should recieve it.*

That he came to *London* the 27<sup>th</sup> of *May*, and sent for Mr. *Disney*, who told him, that Capt. *Matthews* and *Wildman* were both out of Town. Whereupon he deliver'd his Message to him, to convey it to the Lords concer'nd. That *Disney* said, he did not know where to get one to convey the Message to them, but that he would do what he could: That he saw *Disney* afterwards, but he gave him no Account whether he had deliver'd the Message. That the Deponent afterwards went out of Town, and met the Duke of *Monmouth* at *Lyme*, where he Landed; and acquainted him what he had done, and the Duke seem'd troubled that *Matthews* was out of Town.

Mr. Story was Sworn.

Att. Gen. What Notice had you of *Jones's* Message?

Story. On the 28<sup>th</sup> of *May* last, one told me, that Mr. *Jones* was return'd from *Holland*, with a Message from the Duke of *Monmouth*; and that he

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Story deposes, the Prisoner had Notice of *Jones's* Message.

had agreed to go to *Taunton*. And he said, that Mr. *Jones's* Message was deliver'd to *Disney*, in the absence of Capt. *Matthews*; and that when *Disney* had receiv'd the Message from *Jones*, he had some Discourse with my Lord *Delamere*: And, that that Night, my Lord *Delamere* went out of Town with two Friends, and went a by-Way through *Enfield-Chase*, to *Hayfield*. And I heard the Duke of *Monmouth* say, at *Shepton Mallet*, That his great Dependance was upon my Lord *Delamere*, and his Friends in *Cheshire*; but he was afraid they had fail'd him, or betray'd him, or some such Word: And, he said, he could have been supply'd otherwise, but that he had a Dependance upon them.

Lord *Delamere*. I desire to know if he knows one *Thomas Saxon*?

Story. Yes, I knew him a Prisoner in *Dorchester* Prison, where I was Prisoner.

*Vaux* was Sworn.

*Vaux's* Evidence of his going out of Town, the 27th of May, with the Prisoner.

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He depos'd, That my Lord *Delamere* sent for him to the *Rummer* Tavern in *Queen-street*, the 26th of *May*, and that the 27th, he went out of Town with my Lord, about Nine or Ten a Clock at Night; and that he went by the Name of *Brown*. That they came to *Hoddesdon* about Twelve that Night, and from thence they went to *Hitchin*; and the Deponent return'd back the next Day, but my Lord went into *Cheshire*, to see his Son. That two other Gentlemen went out of Town with them, and one of their Names was *Edlin*.

*Edlin* was Sworn.

*Edlin* to the same Effect.

He depos'd, That the 27th of *May*, *Vaux* came to him at the Custom-House, and ask'd him to go with him to *Hitchin*. That they set out from the *Bell-Inn* in *Coleman-street*, about Nine in the Evening, and came to *Hoddesdon* about Twelve that Night. And that the Prisoner at the Bar went with them, who then went by the Name of *Brown*; and that he said he was going to see a sick Child in *Cheshire*.

*Tracey Pounceford* was Sworn.

*Pounceford* deposes the Prisoner went by the Name of *Brown*.

Att. Gen. We shall prove that my Lord was known by the Name of *Brown* among the Party.

He depos'd, That the 14th of *June*, he was at Mr. *Disney's* House, and Mr. *Joshua Lock* came for

for some of the Duke of *Monmouth's* Declarations; and when three of them were Printed off, they were deliver'd him, which was about Nine a Clock at Night; and, he said, they were for one Mr. *Brown*, and he was very earnest to go out of Town with them that Night. That by Mr. *Brown*, the Deponent understood my Lord *Delamere*; for about the latter end of *May*, Mr. *Edlin* told the Deponent, he went out of Town with my Lord *Delamere*, and he went by the Name of *Brown*: And that *Disney* himself us'd to mention him by the Name of *Brown*.

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*Babington* was Sworn.

He depos'd, That his Uncle *Vermuyden*, desired him, whenever he discoursed of my Lord *Delamere*, to call him by the Name of *Brown*; and that once, in Company, when one happen'd to name my Lord *Delamere*, he was taken up, and it was said, *Mr. Brown you mean*; to which the Party answer'd, *Ay I do*. And that *Disney* told him, he should Print 500 of the Duke of *Monmouth's* Declarations; and a great Number were to be sent to my Lord *Delamere*.

*Babington* to the same Effect.

*Att. Gen.* We bring the next Witness to prove my Lord *Delamere* took frequent Journies, backward and forward, in a very little time; and us'd some Discourses about the Time of *Monmouth's* Rebellion, to stir up the People to join with him.

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*Hope*, the Landlord of the *Three Tuns* at *Coventry*, Sworn.

He depos'd, That my Lord *Delamere* went up and down, to and from *London*, five times, between the Coronation, and the 1st of *June* following, and sometimes privately, without a Servant. That being at his House the 2<sup>nd</sup> of *June*, and the Deponent asking him, if the Duke of *Albermarle* was kill'd, as was reported? he said, he fear'd it was too true; and that if he were kill'd, it was by a Party of his own Men, who being commanded to Fire at the Duke of *Monmouth's* Men, they shot into the Ground; upon which, they were very severely handled by their Officers; which so inrag'd them, that they Fir'd upon them, and Kill'd several of them, and among others, the

*Hope's* Evidence of the Prisoner's making frequent Journies before the Rebellion.

Duke of *Albermarle*. And that the Duke of *Monmouth* had several Field-Pieces and Arms, sufficient for 30000 Men; and that he shew'd the Deponent in a Map, the Towns that *Monmouth* was possess'd of; and said, he fear'd there would be many Bloody Noses before the Business was at an end.

*Thomas Saxon* was Sworn.

*Att. Gen.* Give an Account what you know of my Lord *Delamere*, concerning an Infurrection or Rebellion design'd by him in *Cheshire*?

*Saxon's Evidence of the Prisoner's employing him to stir up the People, and sending him to the Duke of Monmouth,*

*Saxon.* About the 3d or 4th of *June* last, I was sent for to *Mere*, my Lord *Delamere's* House, where when I came, I was convey'd into a lower Room, where were my Lord *Delamere*, Sir *Robert Cotton*, and Mr. *Crew Offley*, and they told me, I was recommended to them by my my *Ld. Brandon* as an honest useful Man, and they hop'd I would prove so; for they had sent to the Duke of *Monmouth*, who was in *Holland*, and receiv'd an Answer by one *Jones*; and as soon as they had an Answer, my Lord *Delamere* came away Post into the Country under another Name, and came down to raise 10000 Men for the Duke of *Monmouth* by the 1st of *June*; but now they had consider'd it, and found they could not raise them till *Midsummer*: for they must have Time to raise a Sum of Money, 40000 *l.* in that Country, to maintain the Men: They ask'd me, Whether I would not undertake to carry a Message to the Duke of *Monmouth*; I told them I would, and I had there given me Eleven Guineas, and Five Pounds in Silver, for my Journey, and I did hire a Horse afterwards, and did deliver my Message to the Duke of *Monmouth*.

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*L. H. S.* How came you to be recommended by my Lord *Brandon* to these Gentlemen.

*Saxon.* Upon *Monday* in *Easter Week* last, I was sent for to my Lord *Brandon*, to drink a Glass of Ale with him, and the Company being withdrawn, he began to discourse of the Unfairness of an Election, that had been carried against him, as well for the Town, as the County of *Lancaster*; and said, The County were so exasperated, that they were resolv'd to make it an Occasion of Rising in Arms;



Arms; that they had a Design to send for the Duke of *Monmouth*, and make him King; and that they must make use of such Men as me, that were Men of Interest in the Country, to stir up the People to Rise in Arms. And directed me to come to his House at *Gosworth*, the *Monday* after; and when I came, he shew'd me a Letter that he had Written to the Duke of *Monmouth*; which Letter, I afterwards saw at *Bridgwater*.

*L. H. S.* From whom did you receive the Money?

*Saxon.* I received it from my Lord *Delamere*.

Lord *Delamere*. When was the first Time he declar'd this, that he has now sworn?

*Saxon.* I told Story of it first, I suppose, at *Dorchester*, after I was taken Prisoner; where he was my fellow Prisoner, and lay in the same Bed with me.

Lord *Delamere*. Where did he first make Oath of it?

*Saxon.* Before those who took my Examination in *Newgate*; which was the beginning of the last Term, when I was remov'd from *Dorchester*.

Lord *Delamere*. Did he remain Prisoner in *Dorchester*, till that Time?

*Saxon.* Yes; From the 10th of *July*, till I was brought up to *Newgate*.

Lord *Delamere*. Did I ever employ him in any Concerns before, that should give me occasion to trust him with such Secrets?

*Saxon.* I was never employ'd by my Lord *Delamere*, or in his Company, till that Time.

Lord *Delamere*. What was the Business he was to do?

*Saxon.* I was to inform the Country concerning the Time of Rising; I was a publick Tradesman at *Middlewich*, and much acquainted with the ordinary Sort of People.

Lord *Delamere*. Who did I send for him? and, What Time did he come to my House?

*Saxon.* One came for me, who said he was a Tenant of my Lords, and was Lame of one Arm; and we came to the House about the time it grew Dark: And the Man that came with me, went with me

me to the Door, and let me in, and I saw no other Man, till I came into the Room, where my Lord, and those Gentlemen were.

*Lord Delamere.* Was he let in at the Door next the Stable?

*Saxon.* I cannot give an Account of that, for I was never at the House before.

*Att. Gen.* My Lord, We shall rest here, till we see what Defence this Noble Lord will make.

The Prisoner moves that the Court would adjourn till to Morrow.

*Lord Delamere.* May it please your Grace, a great part of the Day is spent, and I desire till to Morrow Morning, to review the Notes I have taken, and then I shall make my Defence.

The Judges advis'd with, Whether the Court can be adjourn'd after Evidence given.

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*L. H. S.* I doubt whether it may be done by Law: If this were in full Parliament, there have been Precedents, to warrant the Adjournment till another Day. But this Court, I take to be of the same Nature, though of a Degree Higher, with the ordinary Courts of Judicature; and in those Courts, after Evidence given, the Jury cannot be adjourn'd, but must proceed in their Enquiry, till they are agreed on their Verdict. If your Lordships please, before such time, as my Lord, the Prisoner at the Bar, enters upon his Defence; I will, with your leave, propound the Question to my Lords the Judges, and hear their Opinion. Therefore, my Lords the Judges, if you will please to go together, and consider of it, and report your Opinions, what the Law is in this Case, we will stay till you come again.

*Then the Judges withdrew into the Exchequer Chamber.*

The Lords withdraw with them.

*E. of Nottingham.* I humbly conceive, this is a Matter which concerns the Priviledge of the Peers, of which, my Lords the Judges, are not the sole Judges; I move, therefore, that we may also withdraw, and consider the Matter with them.

*L. H. S.* My Lords, I think this is a Question, naturally proper for my Lords the Judges to give their Opinions in, Whether this Court, as a Court of Judicature, may, in the midst of a Tryal, adjourn till another Day? and the Priviledge of Peerage cannot come in Question. But if your Lordships have a Mind to withdraw, you may.

*Lords.*

Lords. Ay, Withdraw, withdraw.

*Then the Peers withdrew, and the Judges return'd in about half an Hour, and the Peers in about an Hour.*

L. C. J. *Herbert.* In Obedience to your Grace's Commands, the Judges have consider'd of what your Grace propos'd to them; and they take the Question to be, Not, Whether your Grace may Adjourn your Commission from one Day to another, for that is clear you may, and has been practic'd, in the Case of the Earl of *Somerset* and his Wife? But, Whether, after the Prisoner is upon his Tryal, and the Evidence for the King is given, the Peers, Tryers, may separate for a Time?

No Precedent of the Peers separating after Evidence given.

And my Lords the Judges, presume to acquaint your Grace, That this is a Matter wholly New to them; and they cannot remember, to have read, that either this Matter was done, or question'd, Whether it might, or might not be done, in any Case?

Where the Tryal is by a Jury, in an Inferiour Court, there the Law is clear, the Jury once charg'd, can never be discharg'd, till they have given their Verdict: And the Reason of that Case is, for fear of Corruption, and Tampering with the Jury. But this Reason, it is said, fails in this Case; because the Lords that are to Try a Peer, are Persons of that great Integrity and Honour, that there is not the least Presumption of there being to be prevail'd upon, in any such Way. And for that Reason, because of the Confidence which the Law reposes in Persons of their Quality, they are not Sworn as common Jurors are, but are Charg'd, and deliver their Verdict upon Honour.

A Jury once Charg'd, cannot be discharg'd till they have given their Verdict.

In the Case of a Tryal of a Peer in Parliament, the Matter has been Adjourn'd till another Day, and for divers Days, the Evidence being given by Parcels, and there the Danger is as great of Tampering. But, Whether the Lords being Judges in that Case, and in this Case, only in the nature of a Jury, makes a Difference, though in both Cases, it is but like a Verdict; for they give their Opinions *Sociatim*, Whether the Peer Try'd be Guilty or Not Guilty, that they submit to your Grace.

At the Tryal of a Peer in Parliament, the House may, and does often adjourn; but there the Lords are Judges, in this they are but as a Jury.

*L. H. S.* I would always be very tender of the Privileges of the Peers; but truly, I apprehend this Court is held before me: It is my Warrant that Convenes the Prisoner; It is my Summons that brings the Peers together to Try him, and so I take my Self to be Judge of the Court.

The Lord's, Tryers, may consult the Judges out of the Prisoner's presence.

My Lords, 'tis true, may withdraw, and they may call the Judges to them to assist them; which shews, they have a greater Privilege before the High Steward, in some Cases, than Juries have in inferior Courts. For if it be in a common Case, no Jury can call either Council or Judges to assist them, in the absence of the Prisoner; but if *they* will have Advice, they must have it in open Court, in the presence of the Party accus'd.

But they can ask no Questions of the High Steward out of his presence, nor can he withdraw with them. At a Tryal in full Parliament, 'tis otherwise.

But now, my Lords, if you have a Mind to consult with me in private, as I now sit, by Virtue of this Commission, which is his Majesty's Warrant for me to hold this Court, I could not withdraw with you, but you must ask all your Questions of me, in the presence of the Prisoner, in open Court. Whereas, if it were in full Parliament, as were the Cases of my Lord *Stafford*, and my Lord of *Pembroke*; then he that was the High Steward, might go along with you, when you withdrew, and Consult with you, and give his Opinion; which I cannot do in this Case. Nor can I hear any Thing said to me, but in the presence of the Prisoner, except it be when you deliver your Verdict.

Now, my Lords, suppose I should take upon me to do, as my Lord *Delamere* desires, and Adjourn the Court; and suppose the Law should fall out to be, that I ought not so to have done, Would it be any Advantage to this Noble Peer, if he should be Acquitted by your Lordships after such an Adjournment? Might not the evil Consequence of that be, that he might be Indicted for the same Crime, and Tried again? For all the Proceedings after that, would be Void, and liable to be Reversed.

And if, on the other side, your Lordships should think fit to Convict him, and I pass Judgment upon him, How shall I be able to answer it, when I pronounce a Judgment notoriously Erroneous and Illegal?



Illegal? For so it will be, if the Law prove to be against my Adjourning.

But in the other Case, of a Tryal in full Parliament, the Lord that sits where I do, is only as the Chairman of the Court, rather than Judge; he gives a Vote in such Proceedings, but I have no Authority to give any Vote. My Business is, to see the Law observ'd and fulfill'd, as Judge.

In full Parliament, the High Steward has a Vote; when he sits by Commission, he has none.

We ought to be very tender of committing Errors in Cases of Life and Death; and I would be loth to be recorded for giving an erroneous Judgment in a Case of Blood; and the first Man that should bring an illegal Precedent, the Consequence of which, may extend I know not how far.

Att. Gen. Will your Grace give Direction for my Lord to proceed?

L. H. S. Yes, he must proceed, I think.

Lord Delamere. May it please your Grace, and you my Lords, Here have been a great many Witnesses produc'd, but little or nothing of Legal Evidence, to affect me. There is but one Man that says any Thing positively against me, which is *Saxon*; the rest are but Hearsays, and such remote Circumstances, as may be tack'd to any Evidence against another Person; but are urg'd against me, for want of greater Matters to charge me with. I shall therefore begin with *Saxon*, and examine several Persons that are his Neighbours, and have Convers'd with him, what they have heard and know of him; And first, I desire *Richard Hall* may be call'd.

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The Prisoner is order'd to proceed in his Defence.

L. H. S. If you call Witnesses against *Saxon*, it is fit he should be here, to know what is said against him.

Then *Saxon* and *Hall* both came in.

*Hall* depos'd, That *Saxon* brought him a Letter from *Richard Hildage*, for Six Pounds odd Money, which the Deponent ow'd him, and that the Deponent paid the Money to *Saxon*; but *Hildage* threatned to sue him for the Money afterwards, and said he never receiv'd it, or gave Orders to *Saxon* to recieve it; but that *Saxon* wrote the Letter himself.

The Prisoner calls *Hall*, and other Witnesses, to prove *Saxon* a Man of ill Fame, and is permitted to charge him with particular Crimes.

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*Saxon* acknowledg'd he wrote the Letter, but said it was by *Hildage's* Direction, and that *Hildage* lent him the Money.

*Ling* was call'd.

He depos'd, That *Saxon* receiv'd Twenty five Shillings of *Hildage*, for Mrs. *Wilbraham*; but she said, she knew nothing of it, and he never paid it her.

*L. H. S.* You can never think to take off the Credulity of Witnesses by such Testimony; for this is nothing but a Tale out of an Old Woman's Mouth; and what if this Old Woman told him a Story?

*Shaw* was call'd.

He depos'd, That he ow'd *Saxon* some Money, and that *Saxon* wrote him a Letter, as from *Pangston* the Bailiff, and put *Pangston's* Name to it; and that *Pangston* told the Deponent, he never wrote it.

*Hough* was call'd.

He depos'd, That *Saxon* ow'd him Seven Pounds, and it was agreed, that *Saxon* should give the Deponent a Bond for it. That *Saxon* made the Bond himself, and put in the Sum of Six Pounds, instead of Seven.

To which *Saxon* answer'd, he never ow'd him but Six.

*Wilkinson* was call'd.

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He depos'd, That *Saxon* hired a Horse of him for three Days, and rode away with him; and it was admitted he hired the Horse, and rode into the Rebellion with him.

*William Wright* was call'd.

He depos'd, That *Saxon* was a Man that never kept his Word with any body; and particularly, that he ow'd him Money, and had not kept his Word with him.

*L. H. S.* It is a very hard Case, if any one owes Money, and does not pay it, that his Testimony shall not be credited for that Reason: This rather gives a Countenance to what he says, that you know no other Objections, but such trivial ones, to make against him.

Lord *Delamere*. *Saxon* says, when he was sent for by me, to *Mere*, he found Sir *Robert Cotton*, and

and Mr. *Offley* with me; now I will prove to your Lordship, that Sir *Robert Cotton* was not in *Cheshire* for several Months before and after the Time he speaks of, but that he was in *London* then.

*Billing* was call'd.

He depos'd, That he was Servant to Sir *Robert Cotton*, and bought in the Provisions for the House. That Sir *Robert* came to *London* the 10th of *April* last, and was in Town, at his House at the Horse-Ferry, till the latter end of *July*; when he went out of Town for three Days, to *Epsom*, and then return'd again, and continued here till he was committed to the Tower. That he could be punctual as to the Time, by his Accounts he kept of the Journey, and by the Tradesmen's Bills for the Provision of the House.

The Prisoner proves Sir *Robert Cotton* was in *London*, when *Saxon* swore he was at the Prisoner's House in *Cheshire*.  
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*Margaret Davis* was call'd.

She depos'd, That Sir *Robert* came to Town the 10th of *April*, and did not go out of Town till *August*: That she was constantly in the House, and saw him every Day.

*Mrs. Sidney Lane* was call'd.

She depos'd, That Sir *Robert* came to Town the *April* before the Coronation, and was not out of Town, those three Months of *April*, *May*, and *June*; and that she liv'd in the same House, and saw him every Day.

*Reeves*, Sir *Robert*'s Footman, depos'd to the same Effect.

Mr. *Asburnham* depos'd, He saw Sir *Rob. Cotton* in Town, and presented a Petition for him, about the latter end of the Time allotted for Petitions. And,

Sir *William Twisden* depos'd to the same Effect.

Mr. *Hevingham* depos'd, He saw him the 2d and 3d of *June*. Page 684.

Sir *Willoughby Aston* depos'd, That from the 26th of *May*, to the 4th of *June*, Mr. *Offley* was at his House; and that when he went away, he went to his own House, which was the contrary Way to my Lord *Delamere*'s: And that my Lord *Delamere*'s House is about Eleven Northern Miles distant from the Deponent's.

The Prisoner proves Mr. *Offley* at another Place, when *Saxon* depos'd he was at the Prisoner's House.

*Thomas*

*Thomas Kidd* was call'd.

Page 685.

He depos'd, That he went with his Master, Mr. *Offey*, from Sir *Willoughby Aston's*, the 4th of *June*. That they went directly Home, to *Crew-Hall*, where they arrived about Four or Five at Night; and that his Master did not go from thence that Night.

*Mr. Booth* was call'd.

The Prisoner proves himself to be in *London*, when *Saxon* depos'd he was at his House in *Cheshire*.

He depos'd, That his Brother, my Lord *Delamere*, was in *London*, from the 3d of *June* to the 10th.

*Mr. George Booth*, another of my Lord's Brothers, depos'd, That he saw his Brother, my Lord *Delamere*, in *London*, the 4th of *June*; and that he was in the House of Lords the 5th of *June*, hearing my Lord *Macclesfield's* Cause.

My Lord *Lovelace* depose'd also, That he saw my Lord *Delamere* in the House of Lords, at my Lord *Macclesfield's* Tryal.

*L. H. S.* My Lord *Delamere*, it will be fit for you to give an Account where you were, from the 28th of *May*, till the 3d of *June*.

He continues his Defence.

Page 686.

Lord *Delamere*. If your Grace please, I hope I shall give you full Satisfaction in that by and by: But I hope now I have satisfied your Grace, and the rest of my Lords, that none of us Three, whom this Fellow has mention'd, were at *Mere*, when he says we were.

My Lord, I cannot help it, if People will tell false Stories of me; but I hope your Lordships will consider the Credibility of it. Is it to be imagin'd, I would take a Man I knew nothing of, upon another Man's Word, into so great a Confidence, as to employ him about a Business of this Nature? I beseech your Lordships to look upon him; Does he look as if he were fit to be employ'd for the raising Ten Thousand Men? Does he seem to be a Man of such considerable Interest in his Country? A Fellow, that I have shewn to be of no Reputation in his Country; nay, of a very ill one. And could we have none to employ in a Matter of this Moment, but such a Fellow, as his Neighbours would not take his Word for any Thing? Besides, he is still a Prisoner, and your Lordships



Lordships will not forget he swears to save himself, having been a Rebel by his own Confession; and has not, as I am inform'd, his Pardon yet, which renders his Testimony suspected.

As to my going down on the 27th of *May*, and my frequent Riding Post to and fro, I shall now satisfy your Lordships of the Reason of my Journeys. The first time I went down, which was between the Coronation, was to take Possession of of a Lease of a considerable Value, which was renew'd to me by the Bishop: I made some haste, because of an intimation that the Bishop lay very Ill; and this I shall prove.

The Prisoner confesses his going frequent Journeys, and tells the occasion.

Mr. *John Edmonds* was call'd.

He depos'd, That upon the 5th of *May*, my Lord *Delamere* desir'd him to be Witness to his taking Possession upon a Lease, of my Lord Bishop of *Chester's*; and that my Lord went into a House, next to the Deponent's (at *Boden* in *Cheshire*;) and there did take Possession. That it was a Lease for Lives, and the Bishop was so Ill at that Time, that he spoke to no body.

Mr. *Henry* was call'd.

Page 637.

He depos'd, That he was appointed Attorney, and deliver'd the Possession to my Lord *Delamere*, the 5th of *May*.

Lord *Delamere*. The next Time I have to speak to, is the 27th of *May*, when I went down to see a Sick Child; but had not gone so suddenly, if I had not had Notice there was a Warrant out against me. And when I was at my House in *Cheshire*, my Wife sent me Word, my Eldest Son was so Ill, that I must make haste up, if I would see him alive; and that as to the Warrant, it was a Mistake.

The Reason of his going out of Town, the 27th of *May*, so privately.

Mrs. *Kelsey* was call'd.

She depos'd, That she was at my Lord's House in the Country, when he came down; and he said, the Reason of his coming was, because he heard there was a Warrant for taking him up; and besides, his little Son was Ill.

My Lord *Delamere* desir'd his Mother might be a Witness.

She

She depos'd, That she sent him Word his little Son was Ill, and that thereupon my Lord came down; and that while he was in the Country, my Lady, her Daughter, sent for her Son up Post, because his Eldest Son was dangerously Ill in Town.

Mrs. *Kelsey* depos'd farther, That my Lord came down on *Sunday* Night, and staid till *Tuesday* Morning.

*L. H. S.* *Tuesday* the 2d you came away, she says, and upon *Wednesday*, the 3d of *June*, your Brother says you were in Town.

Lord *Delamere*. It was so my Lord, I came Post through *Coventry*; and that was the time that *Hope* speaks of, that I told him I had come another Way into *Cheshire*. I came back the common Way, my Wife having sent me Word, the Business of the Warrant was a Mistake.

Mr. *Kelsey* was call'd.

Page 688.

He depos'd, That my Lord came down to his House, at Eleven a *Sunday* Night, and took Horse for *London*, at Three on *Tuesday* Morning; and that the Deponent had Letters by him, which gave an Account my Lord was in Town on the *Wednesday*.

Sir *Thomas Millington*, the Physician, was call'd.

He depos'd, That my Lord's Son was so very Ill at that Time, that he acquainted my Lady, he thought he would not recover.

*Edlin* was call'd again, who depos'd, That he parted with my Lord *Delamere* at *Hitchin*, on *Thursday*, the 28th of *May*, about Ten a Clock.

*L. H. S.* Have you any more Witnesses?

Lord *Delamere*. No, my Lord; I hope I have given their Lordships Satisfaction in all Points, and need give no further Evidence. I acknowledge I did go, at that Time, privately, and by a by Road, and by the Name of *Brown*; But as for *Jones*, who is said to come from *Holland* that Day, I call God to Witness, I never so much as saw him, or heard his Name, till I was made a Prisoner. Nor have I wrote or sent any Message to the Duke of *Monmouth*, or reciev'd Letter or Message from him, these three Years. As to what he is said to have declared, admitting he did declare so, yet no Proof being

being made of an actual Correspondence, it shews no more but an Intention in him, to draw Men into Commission of Treason; and if that be allow'd, as a Proof of Guilt, no Man can be Innocent. And had I been Conscious, of having been engag'd in an Affair of this Nature, Can any Man imagin, I would have been so hardy, as to have surrendred my Self upon the King's Proclamation, and voluntarily have deliver'd my Self up to Destruction; especially, if I had had any Transactions of this Kind, with such a Fellow as *Saxon*.

Besides, my Lords, he is but one Evidente, and one Witness is not sufficient to Convict a Man of Treason, though Thousands of Hearsays, and such trivial Circumstances be tack'd to it; especially, when they are tack'd to an Evidence, which I dare say, your Lordships are far from thinking, deserves any Credit. Would not any of your Lordships think himself in a bad Condition, if he could not produce better Evidence, to prove his Title to his Estate? And, If such Evidence as this, would not be sufficient to support a Title to an Estate, certainly it can never be thought sufficient, to deprive a Man of Life, Honour, Estate and all?

One Witness  
not sufficient  
in Treason.  
Page 689.

I may say, your Lordships are now Judging the Cause of every Man in *England*, that shall happen to come under the like Circumstances with my self: For according as you judge of me now, just so will Inferiour Courts be directed to give their Judgments in like Cases in Time to come.

The Law of *England*, is a Law of Equity and Mercy; and both God and the Law, require from your Lordships, Tenderness, in all Cases of Life and Death. And if it should be Indifferent, or but Doubtful, to your Lordships, (which, upon the Proofs I have made, I cannot believe it can be) Whether I am Innocent or Guilty, both God and the Law require you to Acquit me.

Mr. *Solicitor* summ'd up the Evidence, and observ'd, That although it be granted, there must be two Witnesses in Treason, yet there may be Circumstances so Strong and Cogent, so Violent and Necessary, to fortify one positive Testimony, that will amount to make a second Witness such as the

One Witness  
to the Treason, and another to a Circumstance, deem'd two Witnesses.

the Law requires. As if a Man comes and swears against another, that he said, he will go immediately and kill the King; and another Man that did not hear those Words, comes and testifies his lying in Wait, which was an Action indifferent in it self, yet when apply'd to the positive Proof, he will be a second Witness to satisfy the Law, which requires two Witnesses in Treason. And whether my Lord *Delamere's* going out of Town, and by a borrow'd Name, at Ten a Clock, that very Night *Jones* came to Town, and going a by Road to his House in *Cheshire*; and the other Circumstances that had been prov'd, were not such Violent and Necessary Presumptions, as tended to fortify *Saxon's* positive Testimony, he left to the Consideration of their Lordships.

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Page 692.  
Not usual for  
the High  
Steward to  
observe upon  
the Evidence.

The Lord High Steward added, That though it had not been usual of late, for those who sat in his Place, to give their Lordships any Trouble, in Repeating or Observing upon the Evidence: Yet, in this Case, he thought it proper to rectify that Mistake of the Prisoner's, *That there was a Necessity of having two positive Witnesses to Convict a Man of Treason*; for that there may be such other Substantial Circumstances join'd to one positive Testimony, that by the Opinion of all the Judges of *England*, several times, has been adjudged and held to be a sufficient Proof.

The Prisoner  
is Acquitted.

Then the Peers withdrew, and within half an Hour return'd with their Verdict, That my Lord *Delamere* was *Not Guilty*.

*The End of the First PART of the  
Third VOLUME.*

